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Edw Vaughan Williams

From the Author's

A COMPENDIUM

OF THE

LAW OF MERCHANT SHIPPING;

With an Appendix

CONTAINING

ALL THE STATUTES AND FORMS

OF PRACTICAL UTILITY.

BY

FREDERIC PHILIP MAUDE

AND

CHARLES EDWARD POLLOCK,

ESQUIRES, OF THE INNER TEMPLE, BARRISTERS-AT-LAW.

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PREFACE

TO THE THIRD EDITION.

SINCE the publication of the second Edition of this Work in 1861, the Statute Law relating to Merchant Shipping has undergone further changes; the Admiralty Court Act, 1861 (24 Vict. c. 10), the Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63), and the Passengers Act Amendment Act, 1863 (26 & 27 Vict. c. 51), not to mention other Statutes of minor importance, have all been added to the written Law on this subject. Under the Merchant Shipping Act Amendment Act, 1862, new and important regulations have also been issued for preventing collisions at sea, and these rules have been adopted by the Government of France, and that of several other countries.

Many cases have also been decided on the earlier and recent Statutes, and upon the questions dealt with in this Work. In embodying in the present Edition the provisions of the modern Acts, and the decisions which have occurred since the last Edition was published, the Authors have adhered as closely as possible to the original plan of the Book; and have retained such references only to the earlier Statutes as they have deemed necessary to a clear understanding of the Law as it now exists. It would have been easy to swell the bulk of this Work by the addition of all the later cases, whether important or not; but care has been taken to insert only those modern decisions which have appeared

to illustrate and define the Law, and to avoid incumbering the text with cases of trifling importance.

The ancient Maritime Laws of Europe are cited from the text, and referred to according to the divisions adopted by M. Pardessus, in his *Collection de Lois Maritimes*. Paris, 1828.

The Editions of the Text Books by English and American writers which are referred to are as follows:—

- Molloy de Jure Maritimo, 9th Edit. *London*. 1769.
 Beawes' Lex Mercatoria, by Chitty. *London*. 1813.
 Kent's Commentaries on American Law. *New York*. 1858.
 Smith's Mercantile Law, 6th Edit., by Dowdeswell. *London*. 1859.
 Holt on Shipping, 2nd Edit. *London*. 1824.
 Abbott on Shipping, 10th Edit., by Serjt. Shee. *London*. 1856.
 American Edition, by Story and Perkins. *Boston*. 1846.
 Wilkinson on Shipping. *London*. 1843.
 Park on Insurance, 7th Edit. *London*. 1817.
 Phillips on Insurance, 3rd Edit. *Boston*. 1853.
 Duer on Insurance. *New York*. 1845. (Vol. 2, 1846.)
 Arnould on Insurance, 2nd Edit. *London*. 1857.
 Benecké's Principles of Indemnity in Marine Assurance. *London*. 1824.
 Stevens on Average, 5th Edit. *London*. 1835.

The Index and Table of Cases have been compiled by Mr. C. Warner Lewis, of the Northern Circuit, to whom the Authors are also indebted for very material assistance in preparing the text.

The Authors desire also to acknowledge the kindness shown to them by the Authors of "Pritchard's Admiralty Digest," who allowed them to see the sheets of the new Edition of that Work as it was passing through the press, and thus spared them much labour.

PREFACE

TO THE FIRST EDITION.



THE object of the Writers of this Book has been to provide a Compendium of the Law relating to Merchant Shipping in as small a compass as is consistent with the importance and extent of the subject. The plan adopted has been to confine the text of the Work to the Law of England as it now exists, whether it depend upon statutory enactment or upon the decisions of the Courts of this country; reserving for the notes such remarks upon our own earlier law, and such notices of the laws of foreign countries, as have appeared directly to explain the principles of the existing law.

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ADDENDA ET CORRIGENDA.

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26. In *Stapleton v. Haymen and another*, 33 L. J., Exch. 170, it was held that the property in a ship passes, as between the vendor and his assignees and the vendee, by a bill of sale, although the transfer is not registered pursuant to the Merchant Shipping Act, 1854.
93. Line 25, for "shipping master" read "mercantile marine office superintendent."
94. Line 15, for "shipping master" read "mercantile marine office superintendent."
241. Note (q), *Behn v. Burness*, Cam. Scacc., is now reported 3 B. & S. 752.
282. In *Dakin v. Ozley*, 15 C. B., N. S. 646, which was an action for freight due upon a charter-party, the charterer pleaded that, by the fault of the master and crew, and their negligent and unskilful navigation of the vessel, the cargo was damaged, so that upon its arrival at the port of discharge it was then of less value there than the freight; and that he, the charterer, thereupon abandoned the cargo to the shipowner: it was held, on demurrer, that the plea was bad.
339. Line 3, for "in" read "is."
365. Note (b), *Taylor v. Dewar* is now reported 33 L. J., Q. B. 141.
375. Note (s), *Oppenheim v. Fry* is now reported 3 B. & S. 873.
414. Note (y), *Jardine v. Leathley* is now reported 3 B. & S. 700.
415. Note (c), add *King v. Walker*, 2 H. & C. 384.
476. Note (d), *The Submarine Telegraphic Company v. Dickson* is now reported 33 L. J., C. P. 139.

The following Rules have recently been published by the Conservators of the River Thames:—

RULES and BYE-LAWS for the Regulation of the Navigation of the River Thames.

The Conservators of the River Thames, in exercise of the powers and authority vested in them by the Thames Conservancy Act, 1857, and of every other authority them hereunto in any wise enabling, do order and direct as follows, that is to say:—

1. The 39th Rule or Bye-Law passed under their corporate seal the 3rd day of January, 1860, shall after these present Bye-Laws shall have been approved in the manner required by the said Act, and shall have come into force, be and the same is hereby repealed.
2. Every steam vessel navigating the River Thames between sunset and sunrise shall, while under weigh, exhibit the three following lights, of sufficient power to be distinctly visible with a clear atmosphere on a dark night at a distance of at least one mile, namely,
At the foremast, or, if there be no foremast, at the funnel, a bright white light, suspended at the height of not less than ten feet from the deck, and so fixed as to throw the light from right ahead to two points abaft the beam on either side.
On the starboard side, a green light, so fixed and fitted with an inboard screen as to throw the light from direct ahead to two points abaft the beam on the starboard side.
On the port side, a red light, so fixed and fitted with an inboard screen as to throw the light from direct ahead to two points abaft the beam on the port side.
3. Steamers towing vessels shall, between sunset and sunrise, exhibit in addition to the above-mentioned three lights a white light on the foremast or funnel, not less than four feet vertically above the first-mentioned white light of the like power, and similar to it in every respect.

The seal of the Conservators of the River Thames was this 18th day of April, 1864, affixed by order.

E. BURSTAL, *Secretary.*

I have perused the preceding Rules and Bye-laws for the Regulation of the Navigation of the River Thames, and do allow and approve of the same.

W. ERLE, C. J.

Dated this 26th day of April, 1864.

THE LAW OF MERCHANT SHIPPING.

CHAPTER I.

TITLE TO AND NATIONAL CHARACTER OF MERCHANT SHIPS.

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It is not intended to confine this chapter wholly to the consideration of the law relating to British ships, properly so called; but as these vessels form by far the most important portion of the shipping in our ports, it will be convenient to consider them in the first instance.

The expression "British ship," when used in a legal sense, implied, before the recent alterations of the law on this subject, BRITISH SHIPS.

much more than a ship belonging to this country, or to British subjects; it meant a ship which was registered and navigated according to the British Registry Acts, and which consequently enjoyed the privileges which they conferred. The statutory regulations with respect to navigation having been repealed, the term now merely means a ship belonging to persons entitled by statute to own British ships, and which is registered according to existing law.

It will be necessary to consider this subject, *first*, as it relates to registry, and *secondly*, as it relates to navigation, and it will be found that by far the greater part of the earlier law has been repealed by recent statutes, and that the peculiar and exclusive privileges of British ships have been considerably diminished; for, not only is the right to import goods into this country and her colonies, and to trade on the coast of Great Britain, no longer confined to British ships, and to those belonging to the country of which the goods carried are the produce, but ships of foreign build owned by British subjects residing abroad, or by foreigners who have been naturalized, are now entitled, if duly registered, to all the privileges of British ships, with the exception of the right to the protection and assistance which is derivable from this character.

REGISTRY.

First, with respect to registry. Until recently a register was not required as expressive of a British ship's national character; nor was registration compulsory upon owners; the effect of the Registration Acts being merely that no ships, unless registered, were entitled to the privileges of British ships (*a*). The acts at present in force for regulating the registry of ships are the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104 (*b*));

(*a*) *Le Cheminant v. Pearson*, 4 Taunt. 367. The act 26 Geo. 3, c. 60, seems indeed to have required all those ships to be registered which were entitled to be registered. See *per* Lord Eldon in *Long v. Duff*, 2 B. & P. 215. The first English Navigation Act is the 5 Rich. 2, c. 8, forbidding merchants to bring or carry to or from England in other than "ships of the King's allegiance." The effect of this statute was much diminished by an act which was passed in the next year, 6 Rich. 2, c. 8, and which directed that preference should be given to English ships only if they were "*habiles et sufficientes*." The first act requiring the registry of British ships was

the 12 Car. 2, c. 18; but this and the subsequent acts only required that the ships should be owned by persons of this country, and it was not till the 26 Geo. 3, c. 60 (Lord Liverpool's Act), that the build of the ship was required to be British. See the Law of Shipping and Navigation from the time of Edw. 3 to 1806, by Reeves, 1807; Beawes's *Lex Mercatoria*, and Holt on Shipping. The first statute by which the Registry Acts were consolidated was the 3 & 4 Will. 4, c. 55.

(*b*) The act in force before this was the 8 & 9 Vict. c. 89, as altered by the 12 & 13 Vict. c. 29. Part II. of the M. S. Act, 1854, applies to the whole of the

the Merchant Shipping Act Amendment Act, 1855 (18 & 19 Vict. c. 91); and the Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63).

Part II. of the first of these acts contains the more important provisions by which the ownership, measurement, registry and national character of British ships are now regulated. By sect. 96, the Commissioners of Customs are empowered to alter the forms connected with Part II. of the act, and to issue instructions as to the manner of making entries, &c. by the registrars. Sect. 19 of this act requires that all British ships shall be registered under its provisions, except,

- (1.) Ships duly registered before the act came into operation.
- (2.) Ships not exceeding fifteen tons burthen, employed solely in navigation on the rivers or coasts of the United Kingdom, or of some British possession within which the managing owners are resident (*c*).
- (3.) Ships not exceeding thirty tons burthen, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or the adjacent parts, or in the Gulf of St. Lawrence, or on such portion of the coasts of Canada, Nova Scotia or New Brunswick as lie bordering thereon:

Ships required to be so registered, unless registered, will not be recognized as British ships, and cannot obtain a clearance or transire unless the master produces to the office of customs the certificate of registry (*d*).

With respect to the owners of British ships, the Merchant Shipping Act, 1854, sect. 18, provides that no ship shall be

Who may be
owners.

Queen's dominions (see sect. 17): but it is provided by sect. 108, that nothing in the statute is to affect the 3 & 4 Vict. c. 56, which relates to ships built and trading within the limits of the then charter of the East India Company. See further as to these ships, Wilkin-son's Law of Shipping, Chap. XIII., and *Crawford v. Spooner*, 6 Moore, P. C. C. 1.

(*c*) By sect. 20 of the repealed act 12 & 13 Vict. c. 29, all boats or vessels under fifteen tons burthen wholly owned and navigated by British subjects were admitted as British vessels without registry, if confined to English and Colonial coast and river navigation. In

Benyon v. Cresswell, 12 Q. B. 899, it was held that the property in a boat of this description might be transferred without a bill of sale, although it had once been registered.

(*d*) M. S. Act, 1854, s. 19. If a ship attempts to proceed to sea as a British ship without a clearance or transire, the officer may detain her until the certificate is produced, *ib*. As to the effect of unduly assuming the character of a British ship, see *post*, p. 19. Under special circumstances, a pass may be granted to British ships to pass from one port to another without registry. See sect. 98.

deemed to be a British ship (*e*) unless she belongs wholly to owners of the following description; that is to say:—

(1.) Natural-born British subjects:

No natural-born subject who has taken the oath of allegiance to any foreign sovereign or state may however be such owner, unless he has subsequently taken the oath of allegiance to the Queen, and is, during the whole period of his being an owner, resident within her dominions, or a member of a British factory, or partner in a house actually carrying on business in the United Kingdom, or within the Queen's dominions.

(2.) Persons made denizens by letters of denization, or naturalized by or pursuant to any act of the imperial legislature, or any act or ordinance of the proper legislative authority in any British possession:

Such persons must, however, during the whole period of their being owners, be resident within the Queen's dominions, or members of a British factory, or partners in a house actually carrying on business in the United Kingdom, or within the Queen's dominions, and must have taken the oath of allegiance subsequently to the period of their being so made denizens or naturalized.

(3.) Bodies corporate established under, subject to the laws of, and having their principal place of business in the United Kingdom, or some British possession (*f*).

(*e*) Sect. 106 of this act provides that whenever it is declared by the statute that a ship belonging to any person or body corporate qualified according to this act to be owners of British ships shall not be recognized as a British ship, such ship shall not be entitled to any benefits, privileges, advantages or protection usually enjoyed by British ships, and shall not be entitled to use the British flag or assume the British national character; but, so far as regards the payment of dues, the liability to pains and penalties, and the punishment of offences committed on board, or by any persons belonging to her, she is to be dealt with in the same manner in all respects as if she were a recognized British ship.

(*f*) By the 8 & 9 Vict. c. 89, s. 12, no person who had taken the oath of allegiance to any foreign state, except under the terms of some capitulation, unless he afterwards became a denizen

or naturalized subject of the United Kingdom by the Queen's letters-patent, or by Act of Parliament, nor any person usually residing in any country not under the dominion of the Queen, unless a member of a British factory, or an agent for or a partner of a house carrying on trade in this country, could be owner in whole or in part of a registered ship. Under this statute it was held that a corporation within the United Kingdom, some of whose members were foreigners resident abroad, might register its ships. *Reg. v. Arnaud*, 9 Q. B. 806. By the 12 & 13 Vict. c. 29, s. 17, which continued in operation till the 1st May, 1855, all natural-born subjects of the Queen, denizens, or persons naturalized, whether by letters of denization, Act of Parliament, or act or ordinance of the legislature of any of the British possessions in Asia, Africa or America, or authorized by any such act to hold shares in British shipping, were, on taking the

By the Merchant Shipping Act, 1854, sect. 30, the following persons are authorized and required to register British ships, and are made registrars for the purposes of the act:—

Where and
how registry
may be made.

- (1.) At any port or place in the United Kingdom or Isle of Man approved by the Commissioners of Customs for the registry of ships, the collector, comptroller or other principal officer of customs for the time being.
- (2.) In Guernsey and Jersey, the principal officers of customs, together with the governor, lieutenant-governor or other person administering the government of those islands.
- (3.) In Malta, Gibraltar and Heligoland, the governor, lieutenant-governor or other person administering the government.
- (4.) At any port or place within the limits of the charter, but not under the government of the East India Company, and at which no custom house is established, the collector of duties, together with the governor, lieutenant-governor or other person administering the government (*g*).
- (5.) At the ports of Calcutta, Madras and Bombay, the master attendants, and at any other port or place within the limits of the charter and under the government of the East India Company, the collector of duties, or any other person of six years' standing in the civil service of the company, who is appointed by any of the governments of the company to act for this purpose (*g*).
- (6.) At every other port or place as aforesaid within the Queen's dominions abroad, the collector, comptroller or other principal officer of customs, or of navigation laws, or if there is no such officer resident there, the governor, lieutenant-governor or other person administering the government of the possession in which such port or place is situate (*h*).

oath of allegiance, qualified to be owners of British registered vessels. Both these acts are now repealed by the Merchant Shipping Repeal Act, 1854, the 17 & 18 Vict. c. 120.

(*g*) The government of the territories formerly governed by the E. I. Co. is by 21 & 22 Vict. c. 106, transferred to the Crown.

(*h*) As to the liability of registrars, the returns which are to be made by

them to the Commissioners of Customs, and the application of fees received by the registrars, see sects. 93, 94 and 95. In all cases the place must be approved of by the Commissioners of Customs, subject to the following provision:—The governor, lieutenant-governor or other person administering the government in any British possession where any ship is registered under the authority of the act is, with regard to the per-

Rules for
ascertaining
tonnage.

The Merchant Shipping Act, 1854, contains in sects. 20 to 24, rules for ascertaining the tonnage both of sailing and steam vessels (*i*); and by sect. 25, in every registered British ship, the number denoting the registered tonnage and the number of her certificate of registry must be deeply carved or otherwise permanently marked on her main beam. If this is discontinued she will no longer be recognized as a British ship. By sect. 26 of this act, when the tonnage of any ship has been ascertained and registered, it is thenceforth to be deemed her tonnage, and it must be repeated in every subsequent registry, unless an alteration is made in her form or capacity, or the tonnage has been erroneously computed, in which case the ship may be re-measured and her tonnage correctly registered (*k*).

By sect. 27, ships registered before the act came into operation need not have their registered tonnage altered so as to accord with the new system; but any owner may, if he wishes it, have his ship re-measured according to these rules; and by sect. 28, a power is given to the Commissioners of Customs to require that the engine-rooms of steam ships which have been measured before the present act, and altered by the introduction of store rooms or coal bunkers across them, shall be re-measured, so as not to exclude from the tonnage of the ships, by reason of the deduction which is allowed for the engine-room, a larger space than is proper.

formance of any act or thing relating to the registry of a ship or of any interest therein, to be considered in all respects as occupying the place of the Commissioners of Customs; and any British consular officer, in any place, where there is no justice of the peace, is authorized to take any declaration required or permitted to be made in the presence of a justice of the peace. See sect. 31.

(*i*) The mode of measuring directed by these sections is new, and differs from that prescribed by sects. 16, 17, 18 and 19 of the 8 & 9 Vict. c. 89. In 1849, commissioners were appointed by the government to consider the best method of measuring ships, and they recommended an external measurement. This suggestion being open to many objections was never adopted. The system at present in force was proposed by Mr. Moorsom, one of those commissioners. By sect. 29 of the M. S. Act, 1854, the Commissioners of Customs may, with the sanction of the Treasury, appoint persons to superintend the

survey and admeasurement of ships, and may, with the approval of the Board of Trade, make from time to time regulations for this purpose. By the M. S. A. Amendment Act, 1855 (18 & 19 Vict. c. 91), s. 14, the owner of a ship which has been measured under Rule II. of sect. 22 of the M. S. Act, 1854, may, on application, have the ship re-measured under Rule I. in sect. 21.

(*k*) The M. S. A. Amendment Act, 1862 (25 & 26 Vict. c. 63), provides that any body corporate or persons having power to levy tonnage rates on ships may, if they think fit, with the consent of the Board of Trade, levy such tonnage rates upon the registered tonnage of the ships as determined by the rules for the measurement of tonnage for the time being in force under the principal act, notwithstanding that the local act or acts under which such rates are levied provides for levying the same upon some different system of tonnage measurement. See sect. 4.

These rules as to tonnage do not, of course, affect foreign ships; but by the Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63), s. 60, whenever it is made to appear to the Queen that the rules concerning the measurement of tonnage for the time being in force under the Merchant Shipping Act, 1854, have been adopted by the government of any foreign country, and are in force in that country, the Queen may, by order in council, direct that the ships of such foreign country shall be deemed to be of the tonnage denoted in their certificates of registry or other national papers; and such ships need not be re-measured in any port or place in the Queen's dominions, but are to be deemed to be of the tonnage denoted in their certificates of registry or other papers, in the same manner, to the same extent, and for the same purposes, in, to and for which the tonnage denoted in the certificates of registry of British ships is deemed to be the tonnage of such ships (*l*).

By sect. 32 of the Merchant Shipping Act, 1854, every registrar must keep a book, to be called "The Register Book," and enter therein the particulars specified in the act (*m*).

By sect. 33, the port or place at which any British ship is registered for the time being is to be considered her port of registry, or the port to which she belongs.

With respect to the names of British registered ships; sect. 34 provides as follows:—

- (1.) Before registry, the name of the ship and of the port to which she belongs must be painted on a conspicuous part of her stern, on a dark ground in white or yellow letters, of a length not less than four inches (*n*).
- (2.) No change may be made in the name of any registered ship.
- (3.) No concealment, absence or avoidable obliteration of the names of the ship or her port is permitted, except for the purpose of escaping capture by an enemy.

(*l*) As to the effect of such an order in Council and its publication, alteration and revocation, see the M. S. A. Amendment Act, 1862, ss. 61, 62, 63 and 64.

(*m*) This book is accessible to the public for inspection on payment of a fee of 1s., see sect. 92. To forge or fraudulently alter this book, or any certificate of surveyor, certificate of registry, declaration of ownership, bill of sale, instrument of mortgage, certificate

of mortgage or sale, or any entry or indorsement required by the second part of the act, is a felony. See sect. 101. As to the proof of this and other documents required by the second part of the act, see sect. 107, and the M. S. A. Amendment Act, 1855, s. 15.

(*n*) By the M. S. A. Amendment Act, 1855, s. 13, the Commissioners of Customs may, with the consent of the Board of Trade, exempt any pleasure yacht from this provision.

- (4.) The ship may not be described by or with the knowledge of the owner or master by any name other than the one by which she is registered; for a breach of any of these rules the owner and master each incur a penalty not exceeding 100*l*.

Sect. 35 provides, that the application to register is to be made by the proposed owners, or by some one or more of them, or by their duly authorized agent, and, in the case of bodies corporate, by their duly authorized agent; the authority of the agent, if appointed by individuals, must be testified by writing under the hands of the appointers, and if by a corporation, under its common seal.

By sect. 36, the ship must, before registry, be surveyed by a person duly appointed under the act, who is to grant a certificate specifying her tonnage, build and such other particulars descriptive of her identity as may from time to time be required by the Board of Trade; this certificate must be delivered to the registrar before registry (*o*).

Division of
shares.

The following are the rules with respect to entries in the register book, which are laid down by the Merchant Shipping Act, 1854:—

Sect. 37 prescribes that,—

- (1.) The property in a ship must be divided into sixty-four shares (*p*).
- (2.) Subject to the provisions with respect to joint owners or owners by transmission, not more than thirty-two individuals may be registered at the same time as owners of one ship. This rule does not, however, affect the beneficial title of any number of persons, or of a company represented by or claiming under or through a registered owner or joint owner.

(*o*) A form of this certificate is given in the schedule to the M. S. Act, 1854, see Form A. By sect. 96 of that act, however, the Commissioners of Customs are empowered, with the consent of the Board of Trade, to alter from time to time the forms contained in the schedule of the act, on giving sufficient public notice before issuing an altered form. The form now in use, which will be found in the Appendix, p. cxxlvii, varies slightly from that contained in the schedule to the act.

(*p*) This artificial rule of division was also contained in the 6 Geo. 4, c. 110; and in the later acts which preceded the statute now in force. It seems to have been selected on the supposition that the binary system of halving the ship, and each of the resulting shares, until the whole is reduced to sixty-four parts, is, practically, convenient. See Holt on Shipping, p. 26.

- (3.) No person may be registered as owner of a fractional part of a share; but any number of persons not exceeding five may be registered as joint owners of a ship, or of a share or shares therein.
- (4.) Joint owners are to be considered as constituting one person only with reference to these regulations, and may not dispose in severalty of any interest in a ship, or share in respect of which they are registered.
- (5.) Bodies corporate may be registered as owners by their corporate name.

By sect. 38, before registration, the owner of the ship, or of any share in her, must make and subscribe a declaration in the form prescribed by the act, referring to the ship as described in the certificate of the surveyor, and containing the following particulars (g):—

- (1.) His qualification to be owner.
- (2.) The time when, and the place where, the ship was built, or (if foreign built, and the time and place of building not known) a statement that she is foreign built, and that he does not know the time or place of her building; and in the case of a foreign ship, her foreign name, or (in the case of a ship condemned) a statement of the time, place and Court at and by which she was condemned.
- (3.) The name of the master.
- (4.) The number of shares of which he is entitled to be registered as owner.
- (5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in the ship or any share in her:

This declaration must be made and subscribed in the presence of the registrar if the declarant reside within five miles of the custom-house of the port of registry, but if beyond that dis-

(g) The form is given in the schedule to the act. See the form now in use, Appendix, p. ccxlviii. If it is shown to the satisfaction of the registrar that from any reasonable cause a person cannot make this or any other declaration, or produce any evidence required

by the act in these respects, the registrar, with the sanction of the Commissioners of Customs, and on such terms as they think fit, may dispense with it. See sect. 97. With respect to infants, lunatics or others who are incapable of making a declaration, see sect. 99.

tance in the presence of any registrar or of a justice of the peace (*r*).

By sect. 39, before registration by a body corporate as owner of a ship or of any share, the secretary or other duly appointed public officer must make or subscribe, in the presence of the registrar, a declaration in the form given by the act, referring to the ship as described in the certificate of the surveyor, and containing a statement of such circumstances of the constitution and business of the body corporate as prove it to be qualified to own a British ship, together with the other particulars which are required to be given by an individual in such a declaration (*s*).

Builder's certificate.

Sect. 40 provides that, upon the first registry of a ship there must, in addition to the declaration of ownership, be produced:—

- (1.) In the case of a British-built ship, a certificate (which the builder is required to grant under his hand) containing a true account of the proper denomination and of the tonnage of the ship as estimated by him, and of the time when and of the place where she was built, together with the name of the party (if any) on whose account he has built her; and, if any sale or sales have taken place, the bill or bills of sale under which the ship or share has become vested in the party requiring to be registered as owner.
- (2.) In the case of a foreign built ship, the same evidence as in the case of a British-built ship, unless the person requiring to be registered, or, in the case of a body corporate, the duly appointed officer, declares that the time or place of her building is unknown, or that the builder's certificate cannot be procured, in which case there need

(*r*) By the M. S. A. Amendment Act, 1856, s. 9, any person who, in any declaration made in the presence of or produced to any registrar of shipping in pursuance of the second part of the M. S. Act, 1854, or in any documents or other evidence produced to such registrar, wilfully makes or assists in making, or procures to be made, any false statement concerning the title to, or the ownership of, or the interests existing in any ship or any share or shares in any ship, or who utters, produces or makes use of any declaration or document containing any such false state-

ment, knowing the same to be false, is declared guilty of a misdemeanor. And by sect. 101 of the M. S. Act, 1854, the forging, assisting in or procuring to be forged, fraudulently altering, assisting in or procuring to be fraudulently altered, any register, book, certificate of surveyor, certificate of registry, declaration of ownership, bill of sale, instrument of mortgage, certificate of mortgage or sale, or any entry or indorsement required by the second part of the act, is made a felony.

(*s*) See form, Appendix, p. ccliv.

be produced only the bill or bills of sale under which the ship or share became vested in the party requiring to be registered.

- (3.) In the case of a ship condemned by any competent Court, an official copy of her condemnation.

By sect. 41, a builder who wilfully makes a false statement in any certificate required by the act to be granted by him incurs a penalty not exceeding 100*l.* for each offence(*t*).

Sect. 42 provides that, the foregoing requisites having been complied with, the registrar must enter in the register book:— Entry in book of registry.

- (1.) The name of the ship, and of the port to which she belongs.
- (2.) The details as to her tonnage, build and description comprised in the certificate of the surveyor.
- (3.) The particulars as to her origin stated in the declaration or declarations of ownership.
- (4.) The names and descriptions of her registered owner or owners, and if there is more than one owner, the proportions in which they are interested in the ship(*u*).

By sect. 43, no notice of any trust, express, implied or constructive, may be entered in the register book, or is receivable by the registrar; and, subject to any rights and powers appearing by the register book to be vested in any other party, the registered owner of any ship or share has power absolutely to dispose of it, and to give effectual receipts for any money paid or advanced by way of consideration(*x*).

By sect. 44, upon the completion of the registry of a ship the registrar is to grant a certificate of registry in the form provided by the act(*y*), comprising:— Certificate of registry.

- (1.) The name of the ship and of the port to which she belongs.

(*t*) See also sect. 101.

(*u*) Under the 8 & 9 Vict. c. 89, s. 35, where ships were held by partners, it was not necessary to distinguish the proportionate interest of each. The names, however, of all the partners must have been placed on the register. See *Slater v. Willis*, 1 Beav. 354, decided on similar words in the Registry Act, 6 Geo. 4, c. 110. If a person is by mistake registered as the owner of a ship which is proved to be the property of another, the Court of Chancery will correct the error, and direct the person whose name is on the register to transfer

the ship to the party declared entitled. The jurisdiction of the Court of Chancery is not taken away by the M. S. Act, 1854, in cases not provided for by the statute. *Holderness v. Lamport*, 30 L. J., Chan. 489.

(*x*) By the M. S. A. Amendment Act, 1855, s. 10, shares in ships registered under the M. S. Act, 1854, are to be deemed to be included in the word "stock," as defined by the Trustees Act, 1850 (13 & 14 Vict. c. 60), and the provisions of that act are made applicable to such shares.

(*y*) See form, Appendix, p. cclv.

- (2.) The details as to her tonnage, build and description comprised in the surveyor's certificate.
- (3.) The name of her master.
- (4.) The several particulars as to her origin stated in the declaration or declarations of ownership.
- (5.) The names and descriptions of her registered owner or owners, and if there is more than one owner, the proportions in which they are interested, indorsed upon the certificate.

By sect. 45, whenever a change takes place in the registered ownership of a ship, if it occurs when the ship is at her port of registry, the master must forthwith deliver the certificate of registry to the registrar, and he must indorse thereon a memorandum of the change. If the change occurs during the absence of the ship from her port of registry, then upon her first return the master must deliver the certificate of registry to the registrar, and he must indorse on it the memorandum; or if she previously arrives at any port where there is a British registrar, he must, upon being advised by the registrar of her port of registry of the change having taken place, indorse a like memorandum thereof on the certificate of registry, and may for that purpose require the certificate to be delivered to him, so that the ship be not thereby detained. Any master who fails to deliver to the registrar the certificate of registry incurs a penalty not exceeding 100*l*.

By sect. 46, whenever the master of a British registered ship is changed, if such change is made in consequence of the sentence of a naval Court, the presiding officer of the Court, or if it takes place from any other cause, the registrar, or, if there is no registrar, the British consular officer resident at the port where the change takes place, must indorse on the certificate of registry a memorandum of the change, subscribed with his name, and forthwith report the change of master to the Commissioners of Customs in London; and the officers of customs at any port situate within the Queen's dominions may refuse to admit any person to do any act at such port as master of any British ship, unless his name is inserted in or indorsed upon the certificate of registry as the last appointed master.

By sect. 47, the registrar may, with the sanction of the Commissioners of Customs, upon the delivery up to him of the former certificate of registry, grant a new certificate in the place of the one so delivered up.

Sect. 48 provides, that if the certificate of registry be mislaid, lost or destroyed, if the loss occurs at any port in the United Kingdom, the ship being registered in the United Kingdom, or at any port in any British possession, the ship being registered in the same British possession, then the registrar of her port of registry must grant a new certificate of registry, in lieu of and as a substitute for her original certificate of registry. If, however, the loss occurs elsewhere, the master or some other person having knowledge of the circumstances must make a declaration before the registrar of any port having a British registrar at which the ship is at the time or first arrives after the mislaying, loss or destruction. This declaration must state the facts of the case, and the names and descriptions of the registered owners, to the best of the declarant's knowledge and belief; and the registrar must thereupon grant a provisional certificate as near to the form appointed by the act as circumstances permit, and insert a statement of the circumstances under which the provisional certificate is granted.

Loss of, and
provisional
certificates.

By sect. 49, the provisional certificate must, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered in the United Kingdom, or if registered elsewhere, at her port of discharge in the British possession within which her port of registry is situate, be delivered up to the registrar, who must thereupon grant a new one, as near to the form appointed by the act as circumstances permit. If the master neglects to deliver up the certificate within such time he incurs a penalty not exceeding 50*l.* (x).

Sect. 50 provides, that the certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge or interest whatsoever which any owner, mortgagee or other person may have or claim to have on or in the ship described in such certificate. If any person, whether interested or not in the ship, refuses on request to deliver up the certificate, when in his possession or under his control, to the person for the time being entitled to the custody of it for the purposes of navigation, or to any registrar, officer of the customs, or other person legally

Detainer and
use of certi-
ficate.

(x) See also as to provisional certificates where a ship is transferred at a foreign port, sect. 54, *post*, p. 15.

entitled to require it, a magistrate, or any Court capable of taking cognizance of such matter, may summon and examine the person refusing, and, unless it is proved that there was reasonable cause for the refusal, the offender will incur a penalty not exceeding 100*l*. (a). If, however, it is shown that the certificate is lost, the party complained of must be discharged, and the magistrate or Court must thereupon certify that the certificate is lost.

It has been decided that the effect of this section is to make a pledge of the certificate for whatever purpose void. Therefore where a person who was sole owner and captain of a ship pledged the certificate of registry for a good consideration, it was held that he might nevertheless re-demand it for the purposes of navigation, and that if it was not delivered to him on request, he might maintain an action against the pledgee (b).

By sect. 51, if the person charged with the detainer or refusal is proved to have absconded, so that a warrant cannot be served upon him, or if he persists in his refusal to deliver it, the magistrate must certify the fact, and the same proceedings may then be taken as in the case of a certificate of registry mislaid, lost or destroyed, or as near thereto as circumstances permit.

By sect. 52, if the master or owner of a ship uses or attempts to use for her navigation a certificate of registry not legally granted in respect of it, he is guilty of a misdemeanor, and any military or naval commissioned officer on full pay, or any British officer of customs, or any British consular officer, may seize and detain the ship, and bring her for adjudication before the High Court of Admiralty in England or Ireland, or any Court having Admiralty jurisdiction in the Queen's dominions. If such Court is of opinion that the use or attempt at use has taken place, it must pronounce the ship, with her tackle, apparel and furniture, to be forfeited to the Queen, and may award a

(a) In *R. v. Walsh*, 1 A. & E. 481, which was decided upon a similar provision contained in the 8 & 9 Vict. c. 89, s. 30, it was held that a conviction must state the purpose for which the certificate was required. See also *R. v. Pixley*, 13 East, 91, which was decided on an earlier act, the words of which are not the same. In a case in which a ship's husband and managing owner, who also held the majority of shares, demanded of the master, who

was also part owner, the certificate of registry, while the ship was in harbour and before she had discharged, but gave no reason for doing so, it was held, that there was reasonable ground for the master's refusing to deliver it up. *Arkle v. Hensell*, 8 E. & B. 828.

(b) *Wiley v. Crawford*, 1 E. B. & S. 253; *S. C.* in error, *Id.* 265. The Exchequer Chamber adopted the view taken by the Court below, but expressed some doubt on the point.

portion of the proceeds arising from her sale to the officer so bringing her in.

By sect. 53, if a registered ship is either actually or constructively lost, taken by the enemy, burnt or broken up, or if by reason of a transfer to any persons not qualified, or otherwise, a ship ceases to be a British ship, every person who then owns her, or any share of her, must, immediately upon obtaining knowledge of any such occurrence, if no notice thereof has already been given to the registrar at her port of registry, give such notice to him, and he must make an entry thereof in his register book; and, except in cases where the certificate of registry is lost or destroyed, the master of a ship so circumstanced must immediately, if the event occurs in port, or if elsewhere, within ten days after his arrival in port, deliver the certificate of registry to the registrar, or, if there be no registrar, to the British consular officer at such port, and the registrar, if he is not himself the registrar of her port of registry, or the British consular officer, must forthwith forward the certificate to the registrar of the ship's port. An owner or master who, without reasonable cause, makes default in obeying these provisions, incurs for each offence a penalty not exceeding 100*l*.

It is provided by sect. 54 of the Merchant Shipping Act, 1854, that if a ship becomes the property of persons qualified to be owners of British ships at any foreign port, the British consular officer resident there may grant to the master, upon his application, a provisional certificate, stating—

The name of the ship :

The time and place of her purchase, and the names of her purchasers :

The name of her master :

The best particulars as to her tonnage, build and description that he is able to obtain.

He must forward a copy of the certificate, at the first convenient opportunity, to the Commissioners of Customs in London. This certificate possesses the same force as a certificate of registry until the expiration of six months, or until such earlier time as the ship arrives at some port where there is a British registrar; but upon the expiration of this period, or upon arrival at such port, it is void to all intents.

Under certain circumstances it becomes necessary that a ship Registry anew

and transfer of
registry.

should be registered anew. On this head the Merchant Shipping Act provides by sect. 84, that whenever any registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register book, then, if such alteration is made at a port where there is a registrar, the registrar of such port, but if made elsewhere, the registrar of the first port having a registrar at which the ship arrives after her alteration, must, on application made to him, and on the receipt of a certificate from the proper surveyor specifying the nature of the alteration, either retain the old certificate of registry and grant a new certificate of registry, containing a description of the ship as altered, or indorse on the existing certificate a memorandum of the alteration, and subscribe his name to such indorsement. The registrar to whom this application is made, if he is the registrar of the port of registry of the ship, must himself enter in his register book the particulars of the alteration, and the fact of the new certificate having been granted or of the indorsement having been made on the existing certificate; but if he is not the registrar of that port he must forthwith report such particulars and facts, accompanied by the old certificate of registry in cases where a new one has been granted, to the registrar of the port of registry of the ship, who must retain the old certificate, and enter the particulars and facts in his register book accordingly.

By sect. 85, when the registrar to whom application is made in respect of an alteration, is the registrar of the port of registry, he may, if he thinks fit, instead of registering it, require the ship to be registered anew. Other registrars may require the ship to be registered anew, but they must grant a provisional certificate, or make a provisional indorsement of the alteration in cases where no registry anew is required, taking care to add to such certificate or indorsement a statement that it is made provisionally, and to insert in their report to the registrar of the port of registry of the ship a like statement.

By sect 86, every provisional certificate, or certificate provisionally indorsed, must within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered in the United Kingdom, or if registered elsewhere, at her port of discharge in the British possessions within which her port of registry is situate, be delivered up to the

registrar thereof, who must cause the ship to be registered anew.

By sect. 87, on failure of registry anew in the above cases, the ship is deemed not duly registered, and will no longer be recognized as a British ship.

By sect. 88, if upon any change of ownership in any ship the owner or owners desire to have the ship registered anew, although it is not required by the act, the registrar of the port at which she is already registered may, on the delivery up to him of the existing certificate of registry, and on the other requisites to registry or such of them as he thinks material being duly complied with, make the registry anew, and grant a certificate thereof.

Sects. 89, 90 and 91, and sect. 12 of the 18 & 19 Vict. c. 91, provide, for the first time, for the transfer of the registry of a ship from one port to another, upon the application of all the parties appearing on the register to be interested in her (c).

Until recently a vessel, in order to enjoy the privileges of a **NAVIGATION.** British ship, must not only have been duly registered, but must also have been "navigated as such;" that is, by a master who was a British subject, and by a crew a certain proportion of which, varying as the ship was a foreign going or coasting vessel, consisted of British seamen (d). Now, however, there is no statutory or other restriction on this head, and British ships may be manned by the subjects of any country.

Supposing a ship to be duly registered as a British ship, we have next to consider what her privileges are. These privileges, which formerly conferred in some cases a monopoly of trade to the exclusion of ships of other nations, and in others a right to a more favourable treatment with respect to duties levied by the British government, have of late been from time to time greatly reduced. At present the peculiar rights of a British ship are substantially confined to the right of assuming the national character and flag, and of claiming the protection

**Privileges of
British ships.**

(c) By sect. 98 of the M. S. Act, 1854, a power is given to the Commissioners of Customs, and to the governors of British possessions, to grant passes, under special circumstances, to British ships which have not been registered, so as to enable them to proceed from

one place to another in the Queen's dominions.

(d) 12 & 13 Vict. c. 29, ss. 7, 8, repealed in the first instance by the 16 & 17 Vict. c. 131, s. 31, and now repealed by 17 & 18 Vict. c. 120, which has also repealed the 16 & 17 Vict. c. 131.

and benefit resulting therefrom (*e*). With respect to customs and other duties and charges, and to prohibitions or restrictions as to the voyages in which they may engage, foreign and British ships are now therefore placed on the same footing. If, however, other countries do not act with reciprocity in this respect, the Queen may, by order in Council, impose such prohibitions or restrictions as to the voyages to British dominions in which foreign ships may engage, and such additional duties or charges on them or their cargoes, as will place them in the same position here as that occupied by our ships in the ports of the country to which the foreign vessels belong (*f*).

**NATIONAL
CHARACTER.**

With respect to the national character and flag of British ships (*g*). The Merchant Shipping Act, 1854, provides by sect. 102, that officers of Customs may not grant a clearance or transire for any ship until the master has declared the name of the nation to which he claims that she belongs. This name the officer must inscribe on the clearance or transire, and he may detain the ship until this declaration is made.

(*e*) The various prohibitions under which foreign shipping formerly laboured will be found in the repealed statutes, ending with the 8 & 9 Vict. c. 88, and 17 & 18 Vict. c. 120. The policy of these acts was principally directed against the importation into this country of merchandize, except in British ships or ships of the country of which it was the produce or manufacture. The coasting trade was wholly restricted to British ships until 1854, when, by the 17 & 18 Vict. c. 5, foreign ships were enabled to carry goods and passengers coastwise, and to and from the Channel Islands, and to do so upon the same terms with reference to dock, pier, harbour, light, pilotage, tonnage and other dues as British ships. A practical instance of the value of British registered ships above those of other nations under the old system will be found in the case of *Young v. Turing*, 2 S. N. R. 752, where a vessel having struck on the Goodwin Sands, her value as she lay was only 700*l.*, but two English witnesses stated, that if repaired and entitled to a British register, she would have been worth from 4,500*l.* to 4,700*l.*, and several Dutch witnesses said that she would be worth in Holland only from 2,080*l.* to 2,915*l.*

(*f*) M. S. Act, 1854, ss. 324, 325. This principle of reciprocity has long

been known in our legislation, for chap. 30 of Magna Charta, 9 Hen. 3, after providing for the safe conduct of the merchants of countries in amity with us, directs, that "if they be of a land making war against us, and be found in our realm at the beginning of the wars, they shall be attached without harm of body or goods, until it be known unto us, or our chief justice, how our merchants be intreated there in the land making war against us; and if our merchants be well intreated there, theirs shall be likewise with us." A similar rule has been applied to foreign ships in cases of collision and salvage, by sects. 58 and 59 of the M. S. Act Amendment Act, 1862. It is provided by sect. 106 of the M. S. Act, 1854, that whenever it is declared by that act that a ship belonging to persons qualified to be owners of British ships shall not be recognized as such, this means that the ship shall be deprived of the privileges and protection belonging to British ships, and of the right to use the flag and assume the national character, but is not to affect the payment of dues, the liability to penalties, or the punishment of offences committed on board.

(*g*) As to the national character of ships generally, see Wildman on Search, Capture and Prize, Chap. III.

By sect. 103, if the British flag is used and the national character assumed on board a ship owned in whole or in part by any person not entitled to own British ships, for the purpose of making her appear to be a British ship, she becomes forfeited to the Queen, unless such assumption was made to escape capture by an enemy or by a foreign ship of war in exercise of some belligerent right (*h*).

Sect. 103 of The Merchant Shipping Act, 1854, contains also the following provisions :—

If the master or owner of a British ship does or permits any thing to be done, or carries or permits to be carried any papers or documents, with intent to conceal the British character of his ship from any person entitled by British law to inquire into it, or to assume a foreign character, or with intent to deceive any such person, the ship will be forfeited to the Queen ; and the master, if he commits or is privy to the commission of the offence, is guilty of a misdemeanor.

If any unqualified person, except in the case of transmitted interests hereafter noticed (*i*), acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, such interest is forfeited to the Queen.

Any person who, on behalf of himself or any other person or body of persons, wilfully makes a false declaration touching his or their qualification to own British ships, or any shares therein, is guilty of a misdemeanor ; and the ship or share, to the extent of the interest of the person making the declaration, and unless it is shown that he had no authority to make it, that of the parties on behalf of whom it is made, is forfeited to the Queen.

In order that the above provisions as to forfeitures may be carried into effect, any commissioned officer in the army or navy on full pay, British officers of Customs and British consular officers may seize and detain a ship which has, either wholly or as to any share therein, become subject to forfeiture as above, and bring her for adjudication before the High Court of Admiralty in England or Ireland, or any Court having Admiralty jurisdiction in the Queen's dominions ; and the Court

(*h*) In any proceeding for enforcing a forfeiture under this section, the burden of proving a title to use the British flag and assume the national character lies on the person using and assuming

them. M. S. Act, 1854, s. 103. As to merchant ships using the Queen's colours without warrant from the Admiralty, see sect. 105.

(*i*) *Post*, p. 25.

may make such order in the case as it may think fit, and award to the officer bringing in the ship a portion of the proceeds of the sale of it (*k*).

**TITLE TO
BRITISH
SHIPS.**

Having considered in their order the registry, navigation, privileges and national character of British ships, we will now inquire how a title to them, whether absolute or limited, may be acquired; dealing with the subject under the heads of *Sale*, *Mortgage* and *Capture* (*l*).

Ships are occasionally built for the builder's own use, but more often to order, or for sale; in which case the first ownership, which it is material to notice, will be that acquired by the sale.

SALE.

There being no market overt for ships, a sale to confer a good title must be from one who has a good title himself. We shall see in another Chapter in what cases the master has authority to sell (*m*).

**By Court of
Admiralty and
Courts abroad.**

Upon any dispute of possession, or (since the 3 & 4 Vict. c. 65, s. 4) of title, if it arise in any cause of possession, salvage, wages or bottomry, the Court of Admiralty has jurisdiction by proceeding *in rem*; in such cases the power of the Court to sell, and thereby to confer a good title, is indisputable, and such a sale is binding on all the world (*n*). Sales sometimes occur by order of an Admiralty Court abroad, when a vessel has been surveyed and condemned as unfit for service. Where such a sale has proceeded merely upon the petition of the master, grounded upon the unseaworthiness of the ship, the common law Courts of this country have denied that Vice-Admiralty Courts abroad have any right to decree a sale, either by the law of commerce or by that of nations (*o*). In a case in the English

(*k*) By sect. 104, officers are not responsible, either civilly or criminally, in respect of the seizure or detention of any ship that has been seized or detained by them, although it is not brought in for adjudication, or, if so brought in, is declared not to be liable to forfeiture, if it is shown to the satisfaction of the judge or Court that there were reasonable grounds for the seizure or detention; but if no such grounds are shown, the judge or Court may award payment of costs and damages to any party aggrieved, and make such other order in

the premises as he or it thinks just.

(*l*) It will be found that the following observations apply, to a certain extent, to all ships.

(*m*) See *post*, Chap. III., Master.

(*n*) 3 Kent's Comm. p. 132. See also the judgment in *Cammell v. Sewell*, 3 H. & N. 617; *S. C.* in error, 5 H. & N. 728. Before the passing of the 3 & 4 Vict. c. 65, the Court of Admiralty could not deal with questions of title even when they arose in causes of possession. *The Warrior*, 2 Dods. 288.

(*o*) *Reid v. Darby*, 10 East, 143;

Court of Admiralty, however, where such a sale had taken place at the Mauritius, upon the petition of the master, and it was proved that he was not in possession of any funds to repair the ship, and that the owner's agent, who was not shown to have held any funds, had refused in any way to assist him, and it appeared that he had acted *bonâ fide* and with discretion throughout, it was decided that the colonial Court was justified in decreeing a sale, and the title of the purchaser was upheld (*p*). There was some conflict in the earlier cases as to whether, when such circumstances existed as would entitle the master to sell, the title of the purchaser was strengthened by the decree of the foreign Court of Admiralty; and the weight of these decisions was in favour of the view that in all these cases the real question was merely whether the master had, independently of the interference of the Court, the power to sell. It is however now clear, that the innocent purchaser of a cargo sold by the master abroad (and the same rule is applicable to the ship) under circumstances which do not give him, *by the law of England*, power to sell, may make a good title against the owners, if there is no fraud, and the sale is directed by a Court having jurisdiction in the matter, and is so conducted that by the *lex loci* the property passes (*q*).

It is scarcely necessary to observe that ships are personal property; like other goods and chattels, therefore, they pass to the executors of a deceased owner, and, except where the Registry Acts have made certain formalities essential to their sale, the property in them would, subject to the operation of the Statute of Frauds, pass by a contract of immediate sale (*r*), or by an agreement to be completed *in futuro*, coupled with delivery. Ships, however, from their great value, and frequent

By private persons.

Morris v. Robinson, 3 B. & C. 196. In this case, however, it did not appear that the Vice-Admiralty Court had any jurisdiction to make the decree in question.

(*p*) *The Warrior*, 2 Dods. 288.

(*q*) *Cammell v. Sewell*, 3 H. & N. 617; *S. C.* in error, 5 H. & N. 728. The broad principle upon which this case was decided in the Exchequer Chamber was, that if property is disposed of without fraud in a manner binding by the law of the country where the property is, such a disposition is binding everywhere. Mr. Justice Byles dissented from the judgment of the Court of Error, on the

ground that the law of Norway, on which the purchaser relied, was of so unusual and alarming a nature that it ought not to be recognized by our courts. The case of the *Eliza Cornish*, 17 Jur. 738; *S. C.*, 1 Eccl. & Adm. 36, so far as it is an authority that the law of the foreign country and its effect in passing the property is to be disregarded in these cases, was disapproved of by the Exchequer Chamber.

(*r*) *Tarling v. Baxter*, 6 B. & C. 360, and per Wood, B., in *Hubbard v. Johnstone*, 3 Taunt. 205. Per Parke, J., *Dixon v. Yates*, 5 B. & Ad. 340.

Bill of sale.

absence from port (*s*), have for so long a period been conveyed by a formal instrument known as a bill of sale, that, although the contracts mentioned above would convey sufficient property to the vendee to enable him to maintain trover against a wrongdoer (*t*) (since mere possession is *prima facie* evidence of ownership (*u*)), yet it has been doubted whether, even at common law, such a sale would be valid, without the more solemn conveyance, by the bill of sale (*x*). However this may be, the bill of sale is the universal instrument of transfer in all countries, and is the proper title to which a maritime Court looks (*y*); and where a ship was sold whilst at sea, a delivery of the grand bill of sale was held, before the present system of registration, to amount to a delivery of the ship herself (*z*).

Bills of sale were formerly spoken of as of two kinds. 1. The grand bill of sale, which conveyed the ship from the builder to the owner, or first purchaser, either before or after registry; and, 2, the ordinary bill of sale by which any subsequent transfer was made. These terms are not, however, now in common use. Formerly it was not necessary that either of these documents should be under seal, but it is otherwise under the Merchant Shipping Act, 1854.

No stamp duty is payable on bills of sale, assignments or other conveyances of ships (*a*).

The Merchant Shipping Act, 1854, provides by sect. 55, that a registered ship or any share therein, when disposed of to persons qualified to be owners of British ships, shall be transferred by bill of sale, which must contain the same description of the ship as is in the certificate of the surveyor (*b*), or such other description as may be sufficient to identify her to the satisfaction of the registrar, and must be in the prescribed form (*c*), or as near thereto as circumstances permit, and must be executed by

(*s*) Being invented "to plow the seas, not to lie by the walls." Molloy, B. 2, c. 1, s. 2.

(*t*) *Sutton v. Buck*, 2 Taunt. 302.

(*u*) *Robertson v. French*, 4 East, 130; *Amery v. Rogers*, 1 Esp. 207; *Thomas v. Foyle*, 5 Esp. 88; *Pirie v. Anderson*, 4 Taunt. 652.

(*x*) See Abbott on Shipping, p. 2.

(*y*) Per Sir W. Scott, in *The Sisters*, 5 Rob. 159. In *The Eliza Cornish*, 17 Jur. 738; S. C., 1 Eccl. & Adm. 36, Dr. Lushington said, "ships in general cannot be sold save by an instrument in writing."

(*z*) *Atkinson v. Maling*, 2 T. R. 462.

(*a*) 6 Geo. 4, c. 41, and M. S. Act, 1854, s. 9.

(*b*) See *ante*, p. 8, n. (*o*).

(*c*) With respect to the form of bills of sale and mortgages, the Commissioners of Customs, in their instructions to registrars, sect. 54, say, "the registrars will advise parties interested, that so far as relates to the dealings with, and the title to, the ship, no advantage whatever can be gained by the use of longer or more cumbrous instruments. If there are collateral arrangements between the parties they should be carried into effect by separate instruments."

the transferor in the presence of and be attested by one or more witnesses (*d*).

By the 18 & 19 Vict. c. 91, s. 11, it is provided, that if any bill of sale, mortgage or other instrument for the disposal or transfer of any ship or share or interest therein is made in any form or contains any particulars other than those prescribed and approved by the Merchant Shipping Act, 1854, no registrar shall be required to record it without the express direction of the Commissioners of Customs.

It is provided by sect. 56 of the Merchant Shipping Act, 1854, that, before a person can be registered as transferee of a ship, he must make a declaration in a form prescribed by the act, stating his qualification to be registered as owner of a share in a British ship, and containing a denial similar to that made by an original owner. In the case of a transfer to a corporation, the secretary, or other duly appointed public officer, must make a declaration in the prescribed form, stating the name of the corporation, and such circumstances of its constitution and business as may prove it to be qualified to own a British ship, and containing a denial similar to that contained in a declaration of ownership made on behalf of a body corporate. In the case of

Requirements
of the Mer-
chant Shipping
Act on sales.

(*d*) A new form has been issued by the commissioners. See Appendix, p. cclviii. It will be observed, that the bill of sale is now under seal. By the last Registry Act, 8 & 9 Vict. c. 89, s. 34, it was provided, that British registered ships should be transferred "by bill of sale or other instrument in writing, containing a recital of the certificate of registry of such ship or vessel, or the principal contents thereof," otherwise such transfer should "not be valid or effectual for any purpose whatever either in law or in equity." These words were held to apply to an executory contract, as well as to an absolute sale; therefore an unregistered contract for the sale of shares in a British ship could not be enforced in equity; *Hughes v. Morris*, 2 De G., Mac. & Gor. 349; *M'Calmont v. Rankin*, 2 De G., Mac. & Gor. 403; and this was so even against a purchaser, with notice of the prior sale; *Coombs v. Mansfield*, 3 Drew. 193, in which case it was said, that the operation of the Ship Registry Acts precluded any application of the equitable doctrine of notice. Neither would any action lie for the breach of such a contract; *Duncan v. Tindall*, 13

C. B. 258; nor could equity afford relief even where the purchaser of a ship fraudulently took away the bill of sale and got it registered without having paid the purchase-money. *Follett v. Delaney*, 2 De G. & Sm. 235. It will be observed, that the statute now in force does not require that the certificate of registry should be recited, and it does not declare, that on any departure from the form of bill of sale which it prescribes, the same "shall not be valid or effectual for any purpose whatever either in law or equity." Hence a contract which fails to observe the requirements of the recent statute will be valid and will create all legal and equitable rights between the parties to it, except such only as are annexed by the statute to bills of sale framed according to its provisions. See also the cases cited, *post*, p. 34. Under the 34 Geo. 3, c. 68, ss. 14 and 15 (Lord Liverpool's Act) executory agreements which did not comply with the statute were void. See *Biddell v. Leeder*, 1 B. & C. 327; *Mortimer v. Fleming*, 4 B. & C. 120, and *Chapman v. Callis*, 9 C. B., N. S. 769.

an individual, this declaration must be made, if he reside within five miles of the custom house of the port of registry, in the presence of the registrar, but if beyond that distance, it may be made in the presence of any registrar or of any justice of the peace. In the case of a body corporate the declaration must be made in the presence of the registrar of the port of registry.

By sect. 57, every bill of sale for the transfer of a registered ship, or of any share therein, must, when duly executed, be produced to the registrar of the port at which she is registered, together with the transferee's declaration; and the registrar is to enter in the register book the name of the transferee as owner of the ship or share comprised in the bill of sale, and indorse on the bill of sale the fact of such entry having been made, with the date and hour thereof. Bills of sale must be entered in the register book in the order of their production to the registrar (d).

(d) By the 8 & 9 Vict. c. 89, s. 37, it was provided, that no bill of sale or other instrument should be valid and effectual to pass the property in any ship or share, or for any other purpose, until it had been produced to the collector of the port where she was already registered, or of any other port where she was about to be registered *de novo*, and he had entered certain particulars in the book of registry. Under this section it was held, that a mortgage not registered was inoperative; *Parr v. Applebee*, 7 De G., M. & G. 585; although it seems that a contract relating only to the produce of the sale of a ship would be enforced; *Ib.* and *Armstrong v. Armstrong*, 21 Beav. 78. Accordingly the registration had no effect by relation, so as to defeat the title of assignees of a bankrupt mortgagor accruing subsequently to the execution of the bill of sale, but previously to the registration. In truth, the bill of sale was not in legal existence until registered. *Boyson v. Gibson*, 4 C. B. 121, decided upon the corresponding sections of the 3 & 4 Will. 4, c. 55. The old Registry Act, 34 Geo. 3, c. 68, s. 15, after directing that the indorsement should be made, enacted that, "otherwise such sale or contract, or agreement for sale, shall be utterly null and void to all intents and purposes whatsoever." Upon this section it was held that the transfer of a ship at sea vested the property in the vendee, subject only to be divested by the neglect of the vendor to make the indorsement within the proper time, and that although a bankruptcy intervened

before the arrival of the ship, the indorsement, being only an act of duty on behalf of the vendor, and passing no interest, might be made by the bankrupt. *Dixon v. Ewart*, 3 Mer. 322; *Hubbard v. Johnstone*, 3 Taunt. 177; *Palmer v. Moxon*, 2 M. & S. 43. See also *Moss v. Charnock*, 2 East, 399, and the remarks on those cases in the judgment in *Boyson v. Gibson*, *ubi sup.* Upon some of the earlier acts it was held, that the omission on the part of the officer to make the entry in his book would not invalidate the transfer. See *Ratchford v. Meadows*, 3 Esp. 69; *Heath v. Hubbard*, 4 East, 110; *Thompson v. Smith*, 1 Madd. 413, per Sir Thomas Plumer, V. C. In *Coombs v. Mansfield*, 3 Drew. 193, Kindersley, V. C., refused, when a ship had been registered by the proper authority, to inquire whether the registry ought to have been effected, and said, it must be assumed that the registration was regular and valid. In *Benham v. Keane*, 31 L. J., Chanc. 184, Wood, V. C., said, "If some national policy paramount to all policy between individuals, such as in the case of the Shipping Acts, require fraud to be suffered, then the national interest shall not suffer. The national interest must be protected and individuals must suffer, although the fraud has taken place." The present act for the first time requires the date of the entry to be indorsed on the bill of sale. The 8 & 9 Vict. c. 89, required the date of the production of the bill of sale to be entered. See as to this, *R. v. Philp*, 1 Moo. C. C. 261.

The Registry Act, 8 & 9 Vict. c. 89 (now repealed), contained special provisions to meet the case of several transfers by sale of the same ship or shares, under which provisions priority was given to the vendees, not according to the order in which their bills of sale were entered in the registry book, but according to the time when the indorsement of the particulars of the bills of sale was made on the certificate of registry (*e*). These provisions are omitted in the statute now in force. The certificate of registry is no longer the essential evidence of title, and the priority of vendees appears to depend, although the statute does not declare this in terms, upon the order in which the bills of sale are entered by the registrar in the register book which has just been mentioned.

Before the passing of the Merchant Shipping Act, 1854, it was held that the Ship Registry Acts applied only to transfers made by the acts of the parties, and not to those effected by operation of law, such as the vesting in the assignees of a bankrupt (*f*), or the transfer from a testator to his executor, or to the next of kin, or to residuary legatees (*g*). By sect. 58 of that act it is, however, provided, that if the property in a ship or share becomes transmitted in consequence of the death, bankruptcy or insolvency of a registered owner, or the marriage of a female registered owner, or by any lawful means other than by a transfer according to the provisions of the act, the transmission must be authenticated by a declaration of the person to whom the property has been transmitted, made in the prescribed form, and containing the several statements hereinbefore required to be contained in the declaration of a transferee, or as near thereto as circumstances permit, and, in addition, a statement describing the manner in which and the party to whom such property has been transmitted. The declaration must be made and subscribed, if the declarant resides at or within five miles of the custom house of the port of registry, in the presence of the registrar, but if beyond that distance, in the presence of any registrar or of any justice of the peace.

By sect. 59 of the Merchant Shipping Act, 1854, if such transmission has taken place by virtue of the bankruptcy or insolvency of a registered owner, the declaration must be ac-

(*e*) 8 & 9 Vict. c. 89, ss. 38 to 41.

(*f*) *Bloxam v. Hubbard*, 5 East, 407.

(*g*) Per Lord Eldon, in *Ex parte Yallop*, 15 Ves. 68.

accompanied by such evidence as may for the time being be receivable in courts of justice as proof of the title of parties claiming under any bankruptcy or insolvency; and if the transmission has taken place by virtue of the marriage of a female owner, the declaration must be accompanied by a copy of the register of such marriage or by other legal evidence of its celebration, and must declare the identity of the female owner. If the transmission has taken place by virtue of any testamentary instrument, or by intestacy, then in England, Wales and Ireland the declaration must be accompanied by the probate of the will or the letters of administration, or an official extract therefrom, and in Scotland, or in any British possession, by the will, or any copy thereof that may be evidence by the laws of Scotland, or of such possession, or by letters of administration, or any copy thereof, or by such other document as may by the laws of Scotland, or of such possession, be receivable in the courts of judicature thereof as proof of the person entitled upon an intestacy.

By sect. 60, the registrar, upon the receipt of the declaration so accompanied as above, must enter the name of the person or persons entitled under such transmission in the register book as owner or owners of the ship or share therein in respect of which the transmission has taken place; and such persons, if more than one, must, however numerous they are, be considered as one person only as regards the rule relating to the number of persons entitled to be registered as owners (*h*).

Sect. 61 provides, that of the documents required to be produced to the registrar he is to retain in his possession the surveyor's certificate, the builder's certificate, the copy of the condemnation, and all declarations of ownership.

By sect. 62, whenever any property in a ship or share in a ship becomes vested by transmission, on the death of any owner or on the marriage of any female owner, in any person not qualified to be the owner of a British ship, if such ship is registered in England or Ireland, the Court of Chancery, and if in Scotland, the Court of Session, and if in any British possession, the Court possessing the principal civil jurisdiction within such possession, may, upon an application made by or on behalf of such unqualified person, order a sale to be made of the property so transmitted, and direct the proceeds thereof, after deducting

(*h*) See this rule, *ante*, p. 8.

expenses, to be paid to the person entitled under such transmission, or otherwise as the Court may direct. Such Court may also make or refuse an order for sale, and annex thereto any terms or conditions, and require any evidence in support of the application it may think fit, and generally may act in the premises as the justice of the case requires.

By sect. 63, every such order for a sale must contain a declaration vesting the right to transfer the ship or share so to be sold in some person or persons named by the Court, and such nominee or nominees are thereupon entitled to transfer the ship or share in the same manner, and to the same extent, as if he or they were the registered owner or owners. The registrar must obey the requisition of the nominee, in respect of any transfer, to the same extent as he would be compellable to obey the requisition of a registered owner.

By sect. 64, an application for sale, as above, must be made within four weeks after the occurrence of the event on which the transmission has taken place, or within such further time as the Court allows; such time must not, however, in any case exceed the space of one year from the date of the occurrence. In the event of no such application being made within this period, or of the Court refusing to accede to it, the ship becomes forfeited, as in the case of unqualified owners using a British flag and assuming the British character (i).

By sect. 65, the Courts already mentioned may, without prejudice to their other powers, upon the summary application of any interested person made by petition or otherwise, and either *ex parte* or upon service of notice, as the Court may direct, issue an order, prohibiting for a time named in the order any dealing with a ship or share. The Court may also make or refuse the order, and annex thereto any terms or conditions, and discharge the order when granted with or without costs, and generally may act as the justice of the case requires; and every registrar must upon being served with such order, or an official copy thereof, obey the same without being made a party to the proceedings.

By the Admiralty Court Act, 1861 (k), the Court of Admiralty has the same powers over every British ship, as the Court of Chancery has under sects. 62 to 65 of the Merchant Shipping Act, 1854.

(i) See as to this, *ante*, p. 19.

(k) 24 Vict. c. 10, s. 12.

Certificates of
Sale.

Before the Merchant Shipping Act, 1854, difficulties arose when an owner was desirous of selling or mortgaging a ship which was at any place out of the country or possession in which the port of registry was situated. This act, in order to facilitate such sales and mortgages, by enabling the registrars to grant certificates conferring powers of sale or mortgage, contains the following provisions.

By sect. 76, any registered owner who is desirous of disposing by way of sale of a ship in respect of which he is registered at any place out of the country or possession in which the port of registry is situated, may apply to the registrar for a certificate of sale.

By sect. 77, the owner must state to the registrar the following particulars, which are to be entered in the register book :—
(1.) The names of the persons by whom the power mentioned in the certificate is to be exercised, and the *minimum* price at which the sale is to be made, if it is intended to fix any *minimum* ;
(2.) The specific place or places where the power is to be exercised ; and (3.) The limit of time within which it is to be exercised. If no place is specified, the power may, subject to some provisions to be presently mentioned, be exercised anywhere.

Sect. 78 provides, that no certificate of sale shall be granted to authorize any sale at a place within the United Kingdom, if the port of registry is situated within it ; or at any place within any British possession in which the port of registry is situated. Nor can any certificate be granted to authorize a sale by a person not named in the certificate.

By sect. 79, the certificates must be in the form given by the statute (*1*) ; they must not only mention the particulars required to be entered in the registry book, but must also enumerate any registered mortgages, or certificates of mortgage or sale affecting the ship.

By sect. 81, it is provided, that the following rules shall be observed with respect to certificates of sale :—

- (1.) No such certificate can be granted except for the sale of an entire ship.
- (2.) The power must be exercised in conformity with the directions contained in the certificate.
- (3.) No sale *bonâ fide* made to a purchaser for valuable con-

(1) See Appendix, p. cclx.

sideration can be impeached by reason of the person by whom the power was given dying before the making of the sale.

- (4.) Whenever the certificate contains a specification of the place at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no sale *bonâ fide* made to a purchaser for valuable consideration without notice can be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given.
- (5.) Any transfer made to a person qualified to be the owner of British ships must be by bill of sale in the form already mentioned, or as near thereto as circumstances permit.
- (6.) If the ship is sold to a person qualified to hold British ships, she must be registered anew; but notice of all mortgages enumerated on the certificate of sale must be entered in the register book.
- (7.) Previously to such registry, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry, must be produced to the registrar.
- (8.) The registrar must retain the certificates of sale and registry, and after having indorsed on both of them an entry of the fact of a sale having taken place, must forward them to the registrar of the port appearing on the certificates to be the former port of registry of the ship, and the last-mentioned registrar must make a memorandum of the sale in his register book, and the registry of the ship in this book is then to be considered as closed, except so far as relates to any unsatisfied mortgages, or existing certificates of mortgage entered in it.
- (9.) The description of the ship contained in her original certificate of registry may be transferred to the new register book without her being re-surveyed, and the declaration to be made by the purchaser is the same as that which is required from an ordinary transferee.
- (10.) If the ship is sold to a person not qualified to be the owner of a British ship, the bill of sale by which the ship is transferred, the certificate of sale and the certificate of registry must be produced to some registrar or consular officer, who must retain the certificates, and having

indorsed on them the fact of the ship having been so sold, must forward them to the registrar of the port appearing on the certificate of registry to be the port of registry of the ship; and the last-mentioned registrar must make a memorandum of the sale in his register book, and the registry of the ship in this book is then to be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered in it.

- (11.) If default is made in the production of the certificates mentioned in the last rule, the unqualified purchaser is to be considered by British law as having acquired no title to or interest in the ship; and the person upon whose application such certificate was granted, and the persons exercising the power, are each liable to a penalty not exceeding 100*l*.

Under the same section, and sects. 82 and 83, it is provided that the certificates, if not used, must be given up to be cancelled; the Commissioners of Customs may, in cases in which the certificates are lost or obliterated, direct the issuing of new certificates; and the owners may, in certain cases, by an instrument in a form provided by the act (*m*), authorize the registrars to give notice that the certificate is revoked.

Sale by agent. Sales of vessels are frequently conducted, in the absence of the owner, by brokers(*n*) or agents. Their authority, even if it is given by a power of attorney, is, according to the ordinary rule, revoked by the death of the owner (*o*).

Bankruptcy of or execution against vendor. In ordinary cases of sale, if the ship is in port, she should, in order to convey an indefeasible title, be actually delivered to the purchaser, since, if she is allowed to remain in the possession of the vendor, she would pass to his assignees, should he become a bankrupt, as being in his order and disposition (*p*), or

(*m*) See *post*, Appendix, p. cclxvi.

(*n*) Ship brokers are persons employed in the procuring of freight and passengers for ships. With respect to their remuneration, see *Hill v. Kitching*, 3 C. B. 299; and *post*, Chap. VI. Part I. By an order of the Commissioners of Customs, their officers are not allowed to act as brokers. A ship broker or agent is not within the acts for the regulation of brokers in the city of London. *Gibbons v. Rule*, 4 Bing. 301.

(*o*) *Watson v. King*, 1 Stark. 121; 4 Camp. 272.

(*p*) *Stephens v. Sole*, 1 Ves. 352. Where at the time of the sale the ship is at sea, immediate delivery being impossible, it is sufficient if the bill of sale is delivered to the purchaser, provided that he takes possession of the ship upon her arrival in port. *Brown v. Heathcote*, 1 Atk. 160; *Ex parte Matthews*, 2 Ves. sen. 272; *Atkinson v. Maling*, 2 T. R. 462.

should an execution issue upon a judgment against him, the sale might possibly be held void under the 13 Eliz. c. 5 (q). We shall see, however, that mortgages which are duly registered are not affected by the bankruptcy of the mortgagor, although the ship may at the time be in his order and disposition (r).

Questions of considerable nicety often arise as to the time when the property in vessels which are building vests in the person for whom they are being built. The determination of this point must depend upon the intention of the parties, as evidenced by the terms of the particular contract under which the vessel is built. In the ordinary case of a contract to build a ship, the subject-matter of the contract not being in existence, the vendee acquires no property in it until it is finished, and actually or constructively delivered (s). But where, by the terms of the contract, a superintendent is employed by the vendee to overlook the building, and the price is to be paid by instalments, which are regulated by particular stages in the progress of the work, so that the vendee may be said to appropriate the different portions of the ship as they are from time to time completed, the property in those portions vests in him as soon as each instalment is paid (t). The mere fact of the ship being one-third built at the time of the making of the contract has been held not to have this effect (u). In all these cases the question is one of fact rather than of law; namely, what was the intention of the parties, as evidenced by their contract and the surrounding circumstances (x). In two modern decisions a distinction was drawn, based upon the facts of the cases and nature of the contracts, between the ship herself, and certain materials which, although selected and prepared, had never been actually attached to her; it being held, that the former did and the latter did not vest in the vendee (y).

(q) Per Abbott, C. J., and Bayley, J., in *Robinson v. M'Donnell*, 2 B. & A. 154.

(r) See 12 & 13 Vict. c. 106, s. 225; M. S. Act, 1854, s. 72, and *post*, p. 36.

(s) *Mucklow v. Mangles*, 1 Taunt. 318. See an instance of a constructive delivery, *Carruthers v. Payne*, 5 Bing. 270.

(t) *Woods v. Russell*, 5 B. & A. 942; *Clarke v. Spence*, 4 A. & E. 448. As to what amounts to an appropriation, see

Goss v. Quinton, 3 M. & G. 825; *Wilkins v. Bromhead*, 6 M. & G. 963. *Wood v. Bell*, 5 E. & B. 772; *S. C. in error*, 6 E. & B. 355, and the cases cited above.

(u) *Laidler v. Burlinson*, 2 M. & W. 602.

(x) See *Reid v. Fairbanks*, 13 C. B. 692, and the judgment of the Court in *Wood v. Bell*, 5 E. & B. 772.

(y) *Baker v. Gray*, 17 C. B. 462; *Wood v. Bell*, 6 E. & B. 355.

Warranty on sale.

The simple bargain and sale of a ship does not imply any contract that she is seaworthy, or in a serviceable condition. A conveyance of a ship, whilst at sea, was therefore held to be satisfied, although, at the time of the sale, she had been so much injured as to be totally lost within the meaning of a policy of insurance (*z*). Where, however, a person agrees to build or complete a vessel for a purchaser, she must, in order that the contract may be complied with, be reasonably fit for the service for which she was ordered, and for which, in the contemplation of both parties, she was intended (*a*).

What passes on sale.

Where there are any special terms or warranties in the contract of sale, the rights of the parties must depend upon the circumstances of each particular case (*b*). So on the sale of a ship,

(*z*) *Barr v. Gibson*, 3 M. & W. 390; *Schloss v. Heriot*, 14 C. B., N. S. 59.

(*a*) *Shepherd v. Pybus*, 3 M. & G. 868.

These are only instances of the general rule, that on the sale of an existing chattel of a particular kind, the terms of the contract are satisfied if it is of that kind, since there is, in this case, no implied warranty as to its quality, condition or fitness for any particular purpose. *Parkinson v. Lee*, 2 East, 314; *Budd v. Fairmaner*, 8 Bing. 48; *Chanter v. Hopkins*, 4 M. & W. 399. Where however an article is ordered for a particular purpose, and is made by or under the directions of the vendor, the contract is not complied with unless it will answer such purpose. *Brown v. Edgington*, 2 M. & G. 279. See also *Gray v. Cox*, 4 B. & C. 108; *Ollivant v. Bayley*, 5 Q. B. 288; *Parson v. Sexton*, 4 C. B. 899. There is another class of cases in which the contract is not silent, but the difficulty is to ascertain whether the terms used amount to a warranty, or only to a mere description. See *Budd v. Fairmaner*, *ubi sup.*

(*b*) Where a ship was sold "with all faults," Lord Kenyon held that the vendor was still bound to disclose latent defects known to him. *Mellish v. Motteux*, Peake, 115. In *Baglehole v. Walters*, 3 Camp. 154, Lord Ellenborough dissented from that decision, holding that in the absence of fraud, the vendor was protected by the stipulation. This case was recognized and acted on in *Pickering v. Dowson*, 4 Taunt. 779. But even these words will not protect a vendor if there is a special

description of the vessel in the terms of sale, which would confine their meaning to all faults which a ship answering that description may have. *Shepherd v. Kain*, 5 B. & A. 240. In *Taylor v. Bullen*, 5 Ex. 779, however, a ship having been advertised as A 1, teak-built, was sold by a contract, stating that she was to be bought and sold agreeably to an inventory annexed, which also described her as a teak-built ship, but concluded "the vessel, &c. to be taken with all faults as they now lie, without any allowance for deficiency, &c., or any defect or error whatever." The ship turning out to be neither A 1, nor teak-built, it was held that there was no warranty. The words "with all faults," will not avail to protect the vendor, if means are taken fraudulently to conceal the defects, or a fraudulent description is given at the time of the sale. *Schneider v. Heath*, 3 Camp. 505. Where negotiations occur between parties respecting the sale of a ship, the vendor is only bound by representations contained in the ultimate contract. See per Chambre, J., in *Pickering v. Dowson*, 4 Taunt. 786; *Kain v. Old*, 2 B. & C. 627; *Freeman v. Baker*, 5 B. & Ad. 797. It is otherwise, however, in the case of a fraudulent misrepresentation (that is to say, a representation false to the knowledge of the party making it), by which the vendee is induced to enter into the contract. *Wright v. Crookes*, 2 S. N. R. 685; *Moen v. Heyworth*, 10 M. & W. 147; *Taylor v. Ashton*, 11 M. & W. 401; *Ormrod v. Huth*, 14 M. & W. 651; *Thom v. Bigland*, 8 Exch. 725.

what passes to the vendee, in addition to the vessel itself, will depend upon the terms of the particular contract (*c*). If it is intended to include boats, they should be mentioned, since it has been said that by the words "tackle, furniture, apparel, and all other her instruments thereunto belonging," they are not transferred (*d*). Nor is ballast part of the furniture of a ship (*e*); and it has been held, that under the words "stores, tackle, apparel, &c.," kintlage does not pass (*f*). But under an assignment of "all the appendages and appurtenances" of a ship, her chronometer is included (*g*). A transfer of a share of a ship passes the corresponding share in the freight under an existing charter-party, without the mention of the word freight, for the right to freight is incidental to the ownership of the vessel which earns it (*h*).

We will next consider title by *mortgage*. Before the Re-
MORTGAGE.
gistry Acts, vessels might be mortgaged in the same manner as other chattels; these acts have, however, from time to time, made further conditions necessary to the existence of a complete title by mortgage (*i*).

(*c*) The decisions as to what is covered by policies of insurance have some bearing on this question; see *post*, Chap. VII.

(*d*) Molloy, B. 2, c. 1, s. 8.

(*e*) *Ib.*; *Kynter's Case*, 1 Leon. 46.

(*f*) *Lano v. Neale*, 2 Stark. 105.

(*g*) *Langton v. Horton*, 11 L. J., N. S., Chanc. 299. In *Woods v. Russell*, 5 B. & A. 942, a rudder made and cordage bought by a ship-builder, specifically for a ship, were held to pass with the ship to the vendee as against the assignees of the builder who had become bankrupt; see also *Goss v. Quinton*, 3 M. & G. 825; *Wood v. Bell*, 5 E. & B. 772, and *post*, p. 56, note (*u*).

(*h*) *Lindsay v. Gibbs*, 22 Beav. 522. See as to the liabilities which attach to the vendee, *The Nymph*, 1 Swab. Adm. Rep. 86. As to the effect of imperfect registration on a mortgage, see *Dickinson v. Kitchen*, 8 E. & B. 789; and as to the mortgage of an unfinished ship and its subsequent registration, see *Bell v. Bank of London*, 3 H. & N. 730.

(*i*) Under Lord Liverpool's Act, 26 Geo. 3, c. 60, it was long a question whether an owner could mortgage a ship, retaining in himself the equity of redemption, or whether a compliance with the forms of that act did not ne-

cessarily transfer the whole interest. Since the passing of the later Registry Acts, beginning with 6 Geo. 4, c. 110, the decisions upon this question have become mere matter of history. The following summary of them is given by Mr. Chancellor Kent:—"The language, in many of the cases, as that of Lord Eldon, who scattered *ambiguas voces* to that effect in *Curtis v. Perry*, 6 Vesey, 739; *Campbell v. Stein*, 6 Dow. P. C. 116; *Ex parte Yallop*, 15 Ves. 60; *Ex parte Houghton*, 17 Ves. 251; *Dixon v. Ewart*, 3 Mer. 333, was in favour of the conclusion that there could be no equitable ownership of a ship, distinct from the legal title, and that upon a transfer under the forms of the Registry Acts, the ship becomes the absolute property of the intended mortgagee, and that the terms and the policy of the Registry Acts were incompatible with the existence of any equity of redemption. But these opinions, or dicta, have been met by a series of adjudications, which assume the law to be otherwise, and that the Registry Acts related only to transactions between vendor and vendee, and to cases of real ownership; and that an equitable interest in a ship might exist by operation of law, and by the contract of the parties, distinct from the legal

The Registry Act, which was in force at the time of the passing of the Merchant Shipping Act, 1854, namely, the 8 & 9 Vict. c. 89, provided for the transfer by way of mortgage, as well as for the sale of ships (*k*); and it was held under this act that, unless its provisions in these respects were complied with, there could be no equitable title to a vessel (*l*).

Requirements
of Merchant
Shipping Act
on mortgage.

The Merchant Shipping Act, 1854, contained, however, different provisions on this head, and for the first time prescribed a form of mortgage, which did not purport actually to transfer the ship. This statute excluded from the register all notice of trusts, express, implied or constructive, and declared that, subject to any rights and powers appearing by the register book to be vested in any other person, the registered owner should have power absolutely to dispose of the ship under the provisions of the act (*m*).

The effect of this statute was held to be that it was essential that the mortgage of a ship should be accompanied by the formalities mentioned in the act; and that even in a Court of Equity no effect could be given to an unregistered contract to assign a ship as a security for money due (*n*).

The Merchant Shipping Act Amendment Act, 1862 (*o*), provides, however, with reference to the Merchant Shipping Act, 1854, that the expression "beneficial interest," whenever used in the second part of that act, shall include interests

estate: and that notwithstanding the positive and absolute terms of the indorsement upon the certificate of register, a mortgage of a ship is good and valid according to the law as it existed before the Registry Acts, provided the requisites of the statutes be complied with. *Mair v. Glennie*, 4 M. & S. 240; *Robinson v. Macdonnell*, 5 lb. 228; *Hay v. Fairbairn*, 2 B. & A. 193; *Monkhouse v. Hay*, 2 B. & B. 114. The opinion of Sir Thomas Plumer in *Thompson v. Smith*, 1 Madd. Ch. Rep. 395, contained a very clear and masterly vindication of the validity of the mortgage of a ship consistently with the preservation of the forms of the Registry Acts." 3 Kent Comm. 147. Under the M. S. Act, 1854, it is expressly provided, that registered mortgagees are, notwithstanding notice, to rank according to the priority of the registration of their securities. See sect. 69.

(*k*) See 8 & 9 Vict. c. 89, s. 45. Under

this statute, the same form of transfer might be used in the case of a mortgage as in that of a sale, a statement being added to the entry in the book of registry, and also to the indorsement on the certificate of registry, that the transfer was made only by way of mortgage.

(*l*) See *Davenport v. Whitmore*, 2 Myl. & C. 177; *Langton v. Horton*, 5 Beav. 9; *Follett v. Delaney*, 2 De G. & S. 235. In *Hughes v. Morris*, 2 De G., Mac. & Gor. 349, the Court of Appeal in Chancery approved of these decisions, and declined to enforce the specific performance of a contract for sale of shares in a ship, although it did not affect to transfer the shares, but was only executory. And see *Duncan v. Tindal*, 13 C. B. 258.

(*m*) M. S. Act, 1854, s. 43.

(*n*) *The Liverpool Borough Bank v. Turner*, 1 Jo. & H. 159; S. C., on appeal, 30 L. J., Chanc. 379.

(*o*) 25 & 26 Vict. c. 63, s. 3.

arising under contract and other equitable interests; and that the intention of the act was, that, without prejudice to its provisions for preventing notice of trusts from being entered in the register book or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by it on registered owners and mortgagees, and without prejudice to the provisions contained in it relating to the exclusion of unqualified persons from the ownership of British ships, equities might be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property (*p*).

The statutory provisions now in force with respect to mortgages are as follows:—

The Merchant Shipping Act, 1854, enacts, by sect. 66, that a registered ship or share may be made a security for a loan or other valuable consideration. The instrument creating such security, which is termed in the act a “mortgage,” must be in a form prescribed by the act (*q*), or as near thereto as circumstances permit; and on its production the registrar of the port at which the ship is registered must record it in the register book (*r*).

By sect. 67, every mortgage must be recorded by the registrar in the order of time in which it is produced to him for that purpose; and he must, by memorandum under his hand, notify on the instrument of mortgage that it has been recorded by him, stating the date and hour of such record.

By sect. 68, whenever any registered mortgage has been discharged, the registrar must, on the production of the mortgage deed, with a receipt for the mortgage money indorsed thereon, duly signed and attested, make an entry in the register book to the effect that the mortgage has been discharged. Upon this entry being made, the estate, if any, which passed to the mort-

(*p*) Where a registered mortgagee of a ship deposited with a creditor the instrument of mortgage, and afterwards became bankrupt, it was held that this deposit took the ship out of the order and disposition of the bankrupt and constituted the creditor an equitable mortgagee of the ship. *Lacon v. Liffen*, 32 L. J., Chanc. 25.

(*q*) See Form, App. p. cclxi. If the prescribed form is not adhered to, the registrars are not obliged to record the

mortgage without an express order from the Commissioners of Customs. See 18 & 19 Vict. c. 91, s. 11, and *ante*, p. 22, n. (*b*).

(*r*) This section does not prevent the owner of a ship, who has executed an absolute transfer of his interest in her, from showing that the real intention was to give to the transferee only a security, by way of mortgage, for an advance of money. *Ward v. Beck*, 13 C. B., N. S. 668.

gagee vests in the same person or persons in whom the same would, having regard to intervening acts and circumstances, have vested if no such mortgage had ever been made.

Priority of mortgagees.

By sect. 69, if there is more than one mortgage registered of the same ship or share, the mortgagees, notwithstanding any express, implied or constructive notice, are entitled to priority one over the other according to the date at which each instrument is recorded in the register books, and not according to the date of the instrument itself (*s*).

Sect. 70 provides, that a mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or share, nor shall the mortgagor be deemed to have ceased to be such owner, except in so far as may be necessary for making the ship or share available as a security for the mortgage debt (*t*).

In construing this section, it has been held that a mortgagor who remains in the ostensible ownership of the ship may confer a right of lien against her for necessary repairs (*u*).

By sect. 71, every registered mortgagee has power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase-money. If, however, there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgagee may, except under the order of some Court capable of taking cognizance of such matters, sell it without the concurrence of every prior mortgagee.

Bankruptcy or insolvency of mortgagor.

By sect. 72 of the Merchant Shipping Act, 1854, a registered mortgage of any ship or share is not affected by any act of bankruptcy committed by the mortgagor after the date of the record of the mortgage, notwithstanding the mortgagor at the time of his becoming bankrupt may have in his possession and disposition and be reputed owner of the ship or share thereof. The mortgage is also to be preferred to any right, claim or interest in the ship or any share thereof which may belong to the assignees of the bankrupt.

(*s*) As to the priority of mortgagees under the system of registry adopted before the present act, see *Ex parte Jones*, 2 Tyr. 671; *S. C.*, 2 C. & J. 513.

(*t*) The effect of this section is, not to limit the common law rights of a

mortgagee, but to protect him against claims for which he might otherwise be liable as owner in possession. *Dickinson v. Kitchen*, 8 E. & B. 789.

(*u*) *Williams v. Allsup*, 10 C. B., N. S. 417.

Mortgages, when duly registered, were expressly excepted from the effect of the reputed ownership clauses contained in the Bankrupt Act, 6 Geo. 4, c. 16, s. 72; and the Bankrupt Law Consolidation Act, 12 & 13 Vict. c. 106, s. 125 (x), continues the exception.

By sect. 73 of the Merchant Shipping Act, 1854, a registered mortgage of a ship or share may be transferred to any person. The instrument creating the transfer must be in a form specified by the act (y), and on its production the registrar must enter in the register book the name of the transferee as mortgagee of the ship or shares therein mentioned, and by memorandum under his hand, record on the instrument of transfer that the same has been recorded by him, stating the date and hour of such record.

By sect. 74, if the interest of any mortgagee in a ship or share becomes transmitted in consequence of death, bankruptcy or insolvency, or in consequence of the marriage of a female mortgagee, or by any lawful means other than by a transfer according to the provisions of the act, the transmission must be authenticated by a declaration of the person to whom such interest has been transmitted, made in the specified form (z), and containing a statement describing the manner in which, and the party to whom, such property has been transmitted. This declaration must be made and subscribed, if the declarant resides at or within five miles of the custom house of the port of registry, in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace, and must be accompanied by the same evidence as is required to authenticate a corresponding transmission of property from one registered owner to another (a).

By sect. 75, the registrar, upon the receipt of this declaration and the production of the evidence, must enter the name of the person or persons entitled under such transmission in the regis-

(x) See *Robinson v. McDonnell*, 5 M. & S. 228; *Hay v. Fairbairn*, 2 B. & A. 193; *S. C.* in error, 2 B. & B. 114; *Ex parte Burns*, 1 Jac. & W. 378; *Kirkley v. Hodgson*, 1 B. & C. 588, which were decided upon the repealed Bankrupt Acts. In *Campbell v. Thompson*, 2 Hare, 140, where a mortgagee had omitted to procure an indorsement within thirty days after the return of the vessel, and the owner had subsequently become

bankrupt, it was decided that the former had no equity distinct from his legal rights to restrain the sale of the ship by the assignee. See also *Douglas v. Russell*, 4 Sim. 524, and *Lacon v. Liffen*, 32 L. J., Chanc. 25.

(y) See Form, App., p. cclxi.

(z) See Form, App., pp. cclxvii—cclxix.

(a) See *ante*, p. 23.

Transfer of
mortgages.

ter book as mortgagee or mortgagees of the ship or share in respect of which such transmission has taken place.

By the Admiralty Court Act, 1861 (*b*), sect. 11, jurisdiction is given to the Court of Admiralty over any claim in respect of any mortgage duly registered under the Merchant Shipping Act, 1854, whether the ship or the proceeds thereof be under arrest of the Court or not.

The mortgagee, having only a limited interest in the ship, cannot on his own account insure for an amount beyond that interest (*c*). If he is in possession he is entitled to the use of the ship (*d*). He is also entitled to freight accruing subsequently to the mortgage, if he takes possession of the vessel during the voyage (*e*), but not otherwise (*f*). It will suffice if he takes possession after the ship has arrived in dock, but before the cargo is delivered, as until then the right to freight does not in ordinary cases accrue (*g*). Where a mortgagee took with notice of a charter-party entered into by the mortgagor, the Lords Justices granted an injunction, restraining the mortgagee from exercising a power of sale in such a manner as to interfere with the rights of the charterer (*h*).

The judgment creditor of a mortgagor, who is the registered owner of a ship, cannot take her in execution as against the mortgagee, for this would defeat the right of the mortgagee to make the ship available as a security for his debt (*i*).

Deposit of certificate.

It only remains to add that the provisions of the Registry Acts do not apply to a mere deposit of the certificate to secure advances, so as to prevent a person with whom it has been pledged from having a lien upon it (*k*).

(*b*) 24 Vict. c. 10, s. 11.

(*c*) *Irving v. Richardson*, 2 B. & Ad. 193. The mortgagor has an insurable interest to the extent of the full value. *Alston v. Campbell*, 4 Brown P. C. 476.

(*d*) *De Mattos v. Gibson*, 30 L. J., Chanc. 145.

(*e*) *Dean v. McGhie*, 4 Bing. 45; *Kerswill v. Bishop*, 2 Tyr. 602; *S. C.*, 2 C. & J. 529. See also *Brown v. North*, 8 Exch. 1, where the ship, with all her freight and earnings, was mortgaged, and *Alexander v. Simms*, 5 De G., M. & G. 57.

(*f*) *Gardner v. Cazenove*, 1 H. & N. 423; *Langton v. Horton*, 5 Beav. 22, and *Willis v. Palmer*, 7 C. B., N. S. 340.

An assignment of the ship passes the right to the freight then in progress of being earned, so that a subsequent assignee of the freight takes nothing, because the freight appertains to the ship. See *Morrison v. Parsons*, 2 Taunt. 407, and the judgment in *Willis v. Palmer*.

(*g*) *Cato v. Irving*, 5 De G. & S. 210.

(*h*) *De Mattos v. Gibson*, 4 De G. & J. 276. The injunction was dissolved at the hearing.

(*i*) *Dickinson v. Kitchen*, 8 E. & B. 789.

(*k*) *Mestaer v. Atkins*, 5 Taunt. 381; *Bowen v. Fox*, 10 B. & C. 41; *Clarke v. Batters*, 1 K. & J. 242.

We have already mentioned the powers conferred by the Merchant Shipping Act, 1854, with reference to certificates of sale (*l*). Powers in many respects similar, but which may be exercised not only with respect to the whole ship, but also with respect to any share, are also given by the statute in cases of mortgage. Certificates of mortgage.

Sect. 76 provides for the granting by the registrars of certificates of mortgage to any registered owner desirous of disposing of his interest at any place out of the country or possession where the ship is registered, in the same way and upon the same particulars being furnished as in cases of intended sale (*m*). In cases of mortgage, however, the maximum amount of the charge to be created must, if fixed, be stated.

By sect. 79, the certificates of mortgage must be in a form given by the statute (*n*), and by sect. 80, the following rules are laid down with respect to them by the statute :—

- (1.) The power must be exercised in conformity with the directions contained in the certificate.
- (2.) A record of every mortgage made under it must be indorsed on it by a registrar or British consular officer.
- (3.) No mortgage *bonâ fide* made under it can be impeached by reason of the person by whom the power was given dying before the making of the mortgage.
- (4.) Whenever the certificate contains a specification of the place at which, and a limit of time not exceeding twelve months within which the power is to be exercised, no mortgage *bonâ fide* made to a mortgagee without notice can be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given.
- (5.) Every mortgage registered on the certificate in the manner required by the act has priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book; and if there be more mortgages than one so indorsed, the mortgagees claiming under them are entitled to priority according to the date at which a record of each instrument is indorsed on the certificate, and not according to the date of the instrument creating the mortgage, notwithstanding any express, implied or constructive notice.
- (6.) Subject to these rules, every mortgagee whose mortgage

(*l*) *Ante*, p. 28.

(*m*) *Ante*, p. 28.

(*n*) See Form, App., p. cclxv.

is registered on the certificate has the same rights and powers, and is subject to the same liabilities, as if his mortgage had been registered in the register book instead of on the certificate.

- (7.) The discharge of any mortgage registered on the certificate may be indorsed on it by any registrar or British consular officer, upon the production of such evidence as is required by the act to be produced to the registrar on the entry of the discharge of a mortgage in the register book; and when this is done, the estate, which passed to the mortgagee, vests in the same person in whom it would have vested if no mortgage had been made.
- (8.) Upon the delivery of any certificate of mortgage to the registrar by whom it was granted, he must, after recording in the register book, in such manner as to preserve its priority, any unsatisfied mortgage registered on it, cancel it, and enter the fact of the cancellation in the register book; and every certificate so cancelled is void (*o*).

The Admiralty Court has now, by sect. 11 of the Admiralty Court Act, 1861, jurisdiction over all claims in respect of registered mortgages.

CAPTURE.

Title by capture occurs when the vessel of a foreign enemy is taken in time of war, by a ship belonging to a hostile country (*p*), and is condemned by a competent Court (*q*).

By pirates.

Pirates, who have been styled *hostes humani generis*, are not recognized by the law of nations as enemies, so as to entitle them to the right of capture (*r*), and if ships or goods taken by them be brought into a port of this country, they ought to be returned to the owner (*s*). The vessels, however, of any established government cannot be treated as pirates (*t*).

(*o*) It is important to bear in mind, that, by sect. 100 of the M. S. Act, 1854, all persons beneficially interested (otherwise than by way of mortgage) in any ship or share which is registered in the name of another person, are made liable to the pecuniary penalties imposed by the statute or any other statute, on owners of ships and shares.

(*p*) *Wilson v. Forster*, 6 Taunt. 25.

(*q*) *Molloy*, B. 1, c. 2 and 3; *Assi-vedo v. Cambridge*, 10 Mod. 77; *Bynkershoek Quæst. Publ. Juris*, L. 1, c. 4; *Lyons Edit.* 1767; see also per Lord Mansfield in *Goss v. Withers*, 2 Burr. 690.

(*r*) *Grotius de Jure Belli ac Pacis*, lib. 3, c. 9, s. 16; *Molloy*, B. 1, c. 4.

(*s*) 27 Edw. 3, stat. 2, c. 13; *Jenk. Cent.* 165; *Molloy*, B. 1, c. 4, s. 22. See also the 13 & 14 Vict. c. 26, by which jurisdiction is given to the Court of Admiralty to adjudicate on questions arising from engagements with pirates by Queen's ships, or ships of war belonging to the East India Company, and to restore to the owners, on payment of salvage, property re-taken from pirates.

(*t*) *Molloy*, B. 1, c. 4, s. 4; *The Helena*, 4 Rob. 3.

Capture is usually made by a Queen's ship, or by a merchant vessel having letters of marque (*u*), from the sovereign, or fighting in self-defence. It has been doubted whether a private vessel uncommissioned may capture the ships of an enemy (*x*); the better opinion seems to be, that uncommissioned vessels of a belligerent state, although they can acquire no private property in hostile ships, may at all times capture them, without being deemed by the law of nations to be pirates (*y*). Such seizures are, however, unusual; owners of vessels intended for such service ordinarily procuring letters of marque from their government.

By a Queen's ship or merchant vessel.

The property in vessels or cargoes taken as prizes belongs to the state, and no subject can have any interest in them, except by statute, or under a grant from the Crown (*z*). The distribution of the property in captured vessels taken, either by a Queen's ship or by a private vessel of this country, acting under letters of marque, became during the French war the subject of legislative enactments (*a*); and during the Crimean war, "The Prize Act, Russia, 1854" (17 Vict. c. 18), was passed for the regulation of rights of prize and capture. This act expired with that war (*b*).

To whom property in prizes belongs.

A far more important branch of this subject is the law and practice of condemnation, inasmuch as in time of peace, a title to vessels may be acquired by purchase in the ordinary course of

Condemnation.

(*u*) These are extraordinary commissions issued, either in time of open war, or in time of peace after all attempts to procure legal redress have failed, by the Lords of the Admiralty, or the vice-admirals of a distant province, to the commanders of merchant ships authorizing reprisals, for reparation of the damages sustained by them through enemies at sea; they are either *special*, to make reparation to individuals, or *general*, when issued by the government of one state against all the subjects of another. See 1 Beawes, 311; 1 Black. Com. 258. An interesting account of the extent to which this practice was formerly carried will be found in Hallam's *Middle Ages*, vol. 2, pp. 396-7.

(*x*) 1 Kent Com. 96; Lord Hale's *Treatise concerning the Customs*; Harg. *Law Tracts*, 245.

(*y*) 1 Kent Com. 96.

(*z*) See Vattel's *Law of Nations*, bk.

3, c. 15, s. 229; 1 Blackst. Com. by Christian, 259, note; the judgment of Lord Stowell in *The Elzebe*, 5 Rob. 182, and the judgment of Sir John Nichol in *The Thetis*, 3 Hagg. 281. It would seem that by the common law goods taken from an enemy belonged to the captor. Finch's *Law*, 28, 178; 12 Mod. 135; 1 Will. 213.

(*a*) The statutes relating to prizes and prize-agents will be found collected in Pritchard's *Admiralty Digest*, tit. "Prize;" the last general act during the French war was the 55 Geo. 3, c. 160, which expired with that war.

(*b*) See also the 17 Vict. c. 19. The rules by which the rights of England and France, as allies, were defined in cases of this description will be found in the 17 Vict. c. 18, s. 5, and the convention between the two countries, dated 10th May, 1854.

business, the validity of which may depend upon a previous legal condemnation in time of war, an official copy of which condemnation is required for the purpose of registering as a British ship (c). It has been said, however, that no title to a captured British ship can be acquired by a subject of this country, although the sale to him is subsequent to a legal condemnation by a foreign Court (d).

By what Court. The proceedings in cases of prize being *in rem*, the proper tribunal to condemn a captured vessel is the Admiralty Court of the country of the captor, acting in that country (e). And by the law of nations a prize cannot be legally condemned by a consul, or other minister of the captor's country in the port of a neutral state to which she has been taken (f).

In what place. A further consequence of these proceedings being *in rem* which is stated by the writers on civil law, and admitted by most of the Admiralty Courts in Europe, is, that at the time of the condemnation the prize must be *infra præsidia*, that is, within the dominion of the captor's country. The English Court of Admiralty, however, whilst recognizing this principle in theory, has, by its practice, adopted a different rule, holding that a prize taken by a British subject may be condemned by the Court of Admiralty in this country, although she is in a neutral port at the time of the sentence; and in accordance with the rule, that in the conduct of war that must be held to be lawful in your enemy which is practised by yourself, similar condemnations by a foreign Court of Admiralty have been upheld here (g).

For purposes of condemnation ports belonging to allies are

(c) *Thermolin v. Sands*, Carth. 423; per Lord Mansfield, *Goss v. Withers*, 2 Burr. 694; *Nostra Señora de los Angeles*, 3 Rob. 287; M. S. Act, 1854, s. 40.

(d) Per Lord Eldon in *Woodward v. Larkin*, 3 Esp. 288. By the 17 Vict. c. 18, ss. 42, 43, the ransoming, or entering into any contract to ransom, by English subjects, of any ship or goods belonging to such subjects, and captured by the enemy, was expressly prohibited.

(e) *Molloy*, B. 1, c. 2, s. 21; per Lord Stowell, *The Flad Oyen*, 1 Rob. 139.

(f) *The Flad Oyen*, *ubi sup.*; *The Kierlighett*, 3 Rob. 96; *Havelock v.*

Rockwood, 8 T. R. 268.

(g) *The Heinrich and Maria*, 4 Rob. 43; S. C. affirmed in Court of Appeals, 6 Rob. 138, note (a); *The Comet*, 6 Rob. 285; *The Victoria*, Edw. 97. In America this question has been argued on principle, and the Supreme Court of the United States has held that a condemnation of prize property whilst lying in a neutral port, or in the port of an ally, is valid, and may be rightfully proceeded in by the Courts of the captors. See a note by Mr. Justice Story to the American edition of Abbott on Shipping, p. 16.

considered as ports belonging to the belligerent country to which they are allied, so that a sentence by a consul of the captor's country given in the country of an ally, to a port of which the vessel has been taken, is valid (*h*).

The Admiralty Court of Prizes alone has jurisdiction, not only over the question of prize, but also over all its consequences with respect to freight, cargo, and the like; and wherever such questions arise, the Courts of Common Law are guided by its decisions (*i*).

When, by condemnation, a complete title has vested in the captor, the property in the prize relates back to the time of the capture (*h*), and, consequently, an assignment by the captor in the mean time is valid (*l*).

In order to entitle a captured vessel to the privileges of a British ship she must be registered, and, as in this case, no builder's certificate can be obtained, the owner must produce an official copy of the condemnation of the ship, and must state in the declaration of ownership the time, place and Court at and by which she was condemned (*m*). Registry after
condemnation.

(*h*) *The Christopher*, 2 Rob. 209, per Lord Stowell, 3 Rob. 99; *Oddy v. Bovill*, 2 East, 473.

(*i*) *Hughes v. Cornelius*, 2 Show. 232, "for otherwise," as is quaintly said in that case, "the merchants would be in pleasant condition;" *Tompson v. Smith*, Sid. 320; *Le Cauz v. Eden*, 2 Doug. 594; *Mitchell v. Rodney*, 2 Br. P. C. 423 (1783); *Smart v. Wolfe*, 3 T. R. 323; *Oddy v. Bovill*, *ubi sup.* See also *Faith v. Pearson*, Holt, N. P. C. 111; 6 Taunt. 438, where a ship was seized as prize by a commander of a king's ship, and afterwards released, and it was held that no action at law could be maintained. An elaborate account, by Lord Mansfield, of the origin, history and practice of the Admiralty Prize Court will be found in *Lindo v. Rodney*, 2 Doug. 613, note. The sentence of a foreign Court of Admiralty of competent jurisdiction is binding in this country, and, being *in rem*, binds not only the parties, but is conclusive against all the world, as to the existence of the grounds on which it professes to decide; and if the sentence is general it is final as to the point decided; but if the sentence itself professes to be made on particular grounds which are set forth, and which

do not appear to warrant the condemnation, or if the judgment appears on the face of it to be contrary to natural justice, or to the law of nations, the Courts of this country will not hold themselves bound by it; *Bernardi v. Motteux*, 2 Doug. 574; *Baring v. Claggett*, 3 B. & P. 201; *Pollard v. Bell*, 8 T. R. 434; *Bolton v. Gladstone*, 5 East, 155; *S. C.* affirmed in error, 2 Taunt. 85. See also *Don v. Lippman*, 5 Cl. & Fin. 1; *Henderson v. Henderson*, 6 Q. B. 288; *Williams v. Armroyd*, 7 Cranch (Amer.), 423, and the notes to the *Duchess of Kingston's Case*, 2 Smith's L. C. 656, (5th ed.,) also Story's Conflict of Laws, c. 15. As to the effect of condemnation by foreign Admiralty Courts upon a warranty of neutrality, see *post*, Chap. VII., INSURANCE.

(*k*) *Stevens v. Bagwell*, 15 Ves. 189. As to the consequences of restitution when a vessel has been wrongfully captured, see *Schacht v. Otter (The Ostsee)*, 9 Moore, P. C. C. 150.

(*l*) *Morrough v. Comyns*, 1 Wils. 211; *Alexander v. Duke of Wellington*, 2 Russ. & M. 35.

(*m*) M. S. Act, 1854, sects. 38 and 40, and *ante*, p. 11.

CHAPTER II.

THE OWNER.

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HAVING described the various modes of acquiring and perfecting a title to ships, we will now consider the evidence of ownership, and the duties and liabilities of owners, as between themselves and as regards others.

Possession is, as we have seen, *primâ facie* evidence of ownership (a). Under the earlier statutes relating to the registration of ships, which did not provide that the certificate of registry should be evidence of the matters recited in it, the certificate alone was not even *primâ facie* evidence of ownership. It was necessary to show that the party sought to be charged had either assented to, or adopted the entry (b). Acting upon the same principle, the Courts held that proof of the execution of a bill of sale was not sufficient to charge the alleged purchaser, as owner, unless his assent was shown (c).

PROOF OF
OWNERSHIP.

The later statutes have, however, made a difference with respect to the effect of the certificate of registry as evidence of ownership. The Registry Act of 1845, the 8 & 9 Vict. c. 89, which is now repealed, contained provisions simplifying the formal proof of ownership and making copies of the registers evidence without the production of the originals; and the Law of Evidence Amendment Act, the 14 & 15 Vict. c. 99, which is still in force, provided, by sect. 12, that registers, and copies thereof, and certificates of registry, granted under the acts then in force relating to the registry of British ships, purporting to be signed as required by law, should be received as *primâ facie* proof of all the matters contained or recited in such registers and copies, and of all the matters contained or recited in or indorsed on such certificates of registry.

And now, by the Merchant Shipping Act, 1854, sect. 107, every register of or declaration made in pursuance of the second part of that act in respect of any British ship may be proved either by the production of the original, or by an examined copy, or by a copy purporting to be certified under the hand of the registrar or other person having the charge of the original, and shall be received as *primâ facie* proof of all the matters contained or recited in such registers or copies thereof, and of all the matters contained in or indorsed on such certificates of registry and purporting to be authenticated by the signature of a registrar. The form of certificate of registry now in use mentions the names of the persons who are owners at the time of registration, and the proportions in which they are in-

(a) *Robertson v. French*, 4 East, 130; *Sheriff v. Cadell*, 2 Esp. 617, *ante*, p. 21.

(b) *Pirie v. Anderson*, 4 Taunt. 652; *Fraser v. Hopkins*, 2 ib. 5; *Tinkler v. Walpole*, 14 East, 226. In two cases at

Nisi Prius the rule was laid down without this qualification. See *Stokes v. Carne*, 2 Camp. 339; *Cox v. Reid*, R. & M. 199.

(c) *Tinkler v. Walpole*, *ubi supra*.

but this liability may be narrowed by the terms of the particular contract under which they are carried, and is also in many cases removed by statute.

Commence-
ment of
voyage.

Where a general ship is advertised for a particular voyage, it is the duty of the owners, if her destination is altered, to give specific notice of the change to all those who afterwards ship goods on board (*r*); and it is a general rule, even where there is no express agreement as to time, that there must be no unreasonable or unusual delay in the commencement of the voyage.

The duties of owners with respect to the carriage of passengers will be mentioned in a subsequent chapter (*s*).

LIABILITY OF
OWNERS FOR
LOSS OR DA-
MAGE TO
GOODS AND
FOR PERSONAL
INJURIES, &c.

At common
law.

At common law, shipowners, like other common carriers, were insurers, and were liable as such for any loss or damage to goods intrusted to them, unless it was occasioned by the act of God, (such as storms, tempests and the like,) or of the King's enemies. They were also liable for damage done by their servants acting within the scope of their employment, and the law formerly exacted a full compensation out of all their property, upon the principle that persons undertaking the conveyance of goods are answerable for the conduct of the persons whom they employ, since the parties suffering damage know nothing of these persons and have no control over them (*t*). This general liability, however, no longer exists; it is not only usually narrowed by the express terms of the contract for carriage, but has been materially qualified by several acts of Parliament.

Before we refer to the Merchant Shipping Act, 1854 (the 17 & 18 Vict. c. 104) and the Merchant Shipping Act Amend-

(*r*) *Peel v. Price*, 4 Camp. 243.

(*s*) *Post*, Chap. XI., PASSENGERS.

(*t*) See *per* Lord Stowell, in *The Dundee*, 1 Hagg. 121. The exception of cases of *vis major* allowed by the civil law was not recognized by the common law. *Molloy*, B. 2, chap. 2, s. 2. In a case in which the damage to the goods arose from one of the perils excepted in the bill of lading, but the exposure to that peril was caused by the mode in which the ship was moored during the unloading, it was held, that the shipowners were not liable if they had exercised ordinary and reasonable care. *Laurie v. Douglas*, 15 M. & W. 746. Generally speaking, there is no distinction between a land and a water carrier. See *per* Buller, J., in *Prop. of Trent Naviga-*

tion v. Wood, 3 Esp. 132, and the judgment in *Laveroni v. Drury*, 8 Ex. 170. As to whether shipowners carrying passengers beyond the seas are strictly common carriers, see *Bennett v. The Peninsular Steam Boat Company*, 6 C. B. 775. The fact that a carrier's terminus *ad quem* is without the realm does not relieve him from the liabilities of a common carrier. *Crouch v. The London and North-Western Railway Company*, 14 C. B. 255. The Carriers Act, 11 Geo. 4 & 1 Will. 4, c. 68, protects carriers who have contracted to carry goods partly by land and partly by water, where the loss occurs on the land. *Pi-anciani v. The London and South-Western Railway Company*, 18 C. B. 226.

ment Act, 1862 (the 25 & 26 Vict. c. 63), which are the statutes now in force relating to this subject, it will be convenient to call attention shortly to the earlier acts which limited the liability of shipowners, although these acts are now repealed.

By the 7 Geo. 2, c. 15 (*u*), the liability of owners for loss or damage by reason of the embezzling, secreting or making away with by the master or mariners, without their knowledge or privity, of any goods or merchandize, was limited to the value of the ship and appurtenances, and to the full amount of the freight. Under the earlier statutes.

This act, however, only protected the owners in cases of loss happening through the acts of the master or mariners. A subsequent act, the 26 Geo. 3, c. 86, extended the protection to cases in which the loss was not so caused, limiting the liability of the owners for losses happening without their privity or knowledge, to the value of the ship and all her appurtenances, and the full amount of the freight due, or to grow due, for the voyage whereon the loss occurred (*x*).

The last-mentioned act also exempted the owners from liability for any loss or damage to any goods taken on board by reason of fire on board (*y*); and protected both the master and the owners from responsibility for the loss or damage of gold, silver, watches, jewels or precious stones put on board, by reason of any robbery, embezzlement, secreting or making away with them; unless their true nature and value had been inserted in the bill of lading, or otherwise declared in writing by the owner or shipper to the master or owners at the time of the shipment (*z*).

These acts, however, expressly reserved all remedies against the master and mariners for their own wrongful acts (*a*).

Some years afterwards another act, the 53 Geo. 3, c. 159, was passed, which further materially limited the liability of shipowners.

By this act, shipowners were protected from liability for any loss or damage arising by reason of any act, neglect, matter or

(*u*) This act was passed in consequence of the case of *Boucher v. Lawson*, Rep. temp. Hardw. 85, where the owners were held liable for the loss of goods through the negligence or embezzlement of the master. See *per Buller, J.*,

in *Yates v. Hall*, 1 T. R. 78.

(*x*) 26 Geo. 3, c. 86, s. 1.

(*y*) *Ib.* s. 2.

(*z*) *Ib.* s. 3.

(*a*) 7 Geo. 2, c. 15, s. 4; 26 Geo. 3, c. 86, s. 5.

dize or other things, the limit of the owner's liability is 15*l.* for each ton of the ship's tonnage; and where the injury complained of is in respect of loss or damage to ships, goods, merchandize or other things, the limit is 8*l.* for each ton (*g*).

The tonnage upon which the extent of liability is in these cases to be calculated is, in the case of sailing ships the registered tonnage, and in the case of steam ships, the gross tonnage without deduction on account of the engine room (*h*).

In the case of foreign ships which have been or can be measured according to British law, the act provides that the tonnage, as ascertained by such measurement, is to be deemed, for these purposes, the tonnage of the ship; and that in the case of other foreign ships, which have not been and cannot be measured under British law, the tonnage is to be ascertained by a certificate from the surveyor general of tonnage in the United Kingdom, or from the chief measuring officer in any British possession abroad (*i*).

Insurances effected against any of the events enumerated in the above section, and occurring *without the actual fault or privity of the shipowner*, are valid (*k*).

By sect. 506 of the Merchant Shipping Act, 1854, it is provided that the owners of every sea-going ship shall be liable in respect of every loss of life, personal injury, loss of or damage to goods as is mentioned above, which may arise on distinct occasions, to the same extent as if no other loss, injury or damage had arisen (*l*).

**Mode of
recovering
damages.**

In cases of loss of life or personal injury of the class mentioned above, the Merchant Shipping Act, 1854, empowers the Board of Trade to institute an inquiry, and provides in detail for the recovery of damages before the sheriff and a jury (*m*).

(*g*) M. S. Act Amendment Act, 1862, s. 54.

(*h*) *Ib.*

(*i*) *Ib.*

(*k*) *Ib.* s. 55.

(*l*) In any proceeding under this section, against the owner of a ship or share, in respect of loss of life, the master's list, or the duplicate list of passengers delivered to the proper officer of customs under s. 16 of the Passengers Act, 1855, is, in the absence of proof to the contrary, sufficient proof that the persons in respect of whose death the

proceeding is instituted were passengers on board of the ship at the time of their deaths. M. S. Act Amendment Act, 1862, s. 56.

(*m*) The provisions of the act in this respect are as follows:—The Board of Trade may, after giving not less than three days' notice by post or otherwise to the party to be made defendant, by warrant sealed with their seal or signed by one of their secretaries or assistant secretaries, require the sheriff having jurisdiction over any place in the United Kingdom to summon a jury, at a time

It was expressly provided by the Merchant Shipping Act, 1854, that the provisions in the ninth part of the act (which

and place to be specified in the warrant, for the purpose of determining the number, names and descriptions of all persons killed or injured by reason of any wrongful act, neglect or default.

Upon the receipt of the warrant the sheriff must summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior Courts.

If either party to the inquiry desires the question to be tried before a special jury, it may be so tried, provided that notice of this desire, if coming from the other party, be given to the Board of Trade before it has issued its warrant. In this case the Board of Trade must require the sheriff to nominate a special jury; and the sheriff must summon both the parties before him at some convenient time and place, for the purpose of nominating a special jury; and the sheriff must proceed to nominate and strike and reduce the special jury, in the manner used by the officers of the superior Courts.

The sheriff must preside at the inquiry, and the Board of Trade is to be deemed to be the plaintiff, with power to appoint an agent to act on its behalf, and is to have all the rights and privileges of a plaintiff in an action, and the owners of the ship are to be deemed to be the defendants.

Not less than ten days' notice of the time and place of the inquiry must be served by the Board of Trade on the defendant.

Service on the master of any ship is to be deemed good service on the owner, and the master is, in respect of the proceedings on the inquiry, to be deemed the agent and representative of the owner, with power to appear for him, and to do all things which he might himself have done.

If the defendant does not appear, upon due proof of service of notice, the inquiry is to be proceeded with as if he had appeared.

The empannelling of the jury and the summoning and attendance of witnesses is to be conducted and enforced in England and Ireland as nearly as may be in the manner provided by the Lands Clauses Consolidation Act, 1845, in cases of disputed compensation as to land, and in Scotland in the manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845.

In England and Ireland the sheriff

must, if the Board of Trade requires it, or if the defendant requires it and the Board of Trade consents, appoint as assessor a barrister-at-law of competent knowledge and standing.

The costs incurred by all parties in and incidental to the inquiry are in England and Ireland to be taxed by a master of one of the superior Courts of common law as between attorney and client, and in Scotland by the auditor of the Court of Session as between agent and client; and if the verdict is in favour of the plaintiff they are to be paid by the defendant, but if the verdict is in favour of the defendant they are to be paid by the Board of Trade out of the Mercantile Marine Fund.

The payment of the damages and costs may be enforced by rule or order of such Court or a judge, or otherwise as the Court or judge may think fit.

The Board of Trade may make any compromise as to the damages; and any damages received in pursuance of a compromise must be applied in the same manner, and are subject to the same rules, as if they had been recovered on an inquiry.

The damages payable in each case of death or injury are to be assessed at thirty pounds.

The damages found due on any inquiry are to be the first charge on the aggregate amount for which the owners are liable, and are to be paid in priority to all other claims.

They are to be paid to the Paymaster-General, and distributed by him as the Board of Trade directs; and in directing such distribution the Board of Trade may retain any costs incidental thereto; and as regards the sums paid in respect of injuries, is to direct payment to each person injured of such compensation, (not exceeding the statutory amount,) as the Board may think fit; and as regards the sums paid in respect of deaths, is to direct payment thereof for the benefit of the husband, wife, parent and child of the deceased, or any of them, in such shares, upon such evidence, and in such manner, as the Board may think fit.

The Board of Trade must refund to the owner any surplus remaining under its control after making such distribution.

The Board of Trade is not, nor is any person acting under them, liable, in respect of any act or matter done or

refer as is mentioned above to the liability of shipowners), should not lessen or take away any liability to which any master or seaman, being also owner or part owner of the ship to which he belonged, was subject in his capacity of master or seaman (*n*); this stipulation is not repeated in the Merchant Shipping Act Amendment Act, 1862, which now defines, as we have seen, the liability of shipowners in cases of loss of life, personal injury, and loss or damage to goods. But as the section of the Merchant Shipping Act, 1854, which contains this pro-

omitted to be done, in the distribution of such damages.

If the amount paid to the Paymaster-General is insufficient to meet the demands upon it, the several claims thereon must be proportionally abated.

After the completion of the inquiry, if any person injured estimates the damages payable to him, or if the executor or administrator of any deceased person estimates the damages payable in respect of his death, at a greater sum than the statutory amount, or than the amount accepted by the Board in cases of compromise, he may, upon repaying or obtaining the repayment by the Board of Trade to the owners of the amount paid by them in respect of such injury or death, bring an action for the recovery of damages, in the same manner as if no power of instituting an inquiry had been given to the Board of Trade. But the damages recoverable are to be payable only out of the residue, if any, of the aggregate amount for which the owners are liable, after deducting all sums paid to the Paymaster-General in manner aforesaid; and if the damages recovered in the action do not exceed double the statutory amount, all the costs of the action must be paid by the plaintiff, such costs being taxed in England and Ireland as between attorney and client, and in Scotland as between agent and client.

In cases of loss of life or personal injury of the class mentioned above, no person is entitled to bring an action or institute any suit or other legal proceeding in the United Kingdom, until the completion of the inquiry instituted by the Board of Trade, or until the Board of Trade has refused to institute the same. The Board of Trade is to be deemed to have refused to institute an inquiry, if it omit to proceed for a month after notice has been served on it by any person of his desire to bring an action or institute any legal proceeding.

If the Board of Trade, after having refused to institute an inquiry, afterwards determines to institute one, the damages and costs recovered are to be paid rateably with and not in priority to the costs and damages recovered in any other action or legal proceeding.

In cases where any liability has been or is alleged to have been incurred by any owner in respect of loss of life, personal injury or loss of or damage to ships, boats or goods, and several claims are made or apprehended in respect thereof, the Court of Chancery in England, the Court of Session in Scotland and any competent Court in any British possession, may (subject to the right of the Board of Trade to recover damages in the United Kingdom in respect of loss of life or personal injury) entertain proceedings at the suit of any owner for the purpose of determining the amount of liability (subject as aforesaid), and for the distribution of the amount rateably amongst the several claimants, with power for any such Court to stop all actions and suits pending in any other Court in relation to the same subject-matter; and any such proceeding may be conducted in such manner and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the Court may think just.

All sums of money paid for or on account of any loss or damage in respect of which the liability of the owners of any ship is limited by the ninth part of the statute, and all costs incurred in relation thereto, may be brought into account among part owners of the ship in the same manner as money disbursed for the use of it. See *M. S. Act, 1854*, ss. 507—515.

(*n*) *Ib.* s. 516.

vision, is not repealed by the later act, and the later act is, (by sect. 1,) to be construed with and as part of the earlier act, it is doubtless intended that this limitation to the protection afforded to shipowners shall apply to their liability, as newly defined in the Merchant Shipping Act Amendment Act, 1862.

The powers given by sect. 514 of the Merchant Shipping Act, 1854, to the Court of Chancery, enable that Court to determine the amount of a shipowner's liability, and to distribute that amount among the several claimants, but do not authorize it to decide the question of liability or non-liability. A shipowner, therefore, who seeks the assistance of the Court will not be relieved if he denies his liability altogether (*o*).

The Admiralty Court Act, 1861, (24 Vict. c. 10, s. 13,) further provides that, whenever any ship or the proceeds thereof are under the arrest of that Court, it shall have the same powers as are conferred upon the Court of Chancery, by the ninth part of the Merchant Shipping Act, 1854.

Where a judgment had been obtained in an action commenced in the Admiralty Court, condemning the owners of a ship in damages and costs in respect of the loss of a vessel run down by her, and the ship was arrested by process of the Admiralty Court, and liable to be sold, it was held, upon a bill filed by the owners for the purpose of having their liability ascertained and of staying the proceedings in the Admiralty Court, that the action was still such a suit pending as the Court of Chancery had jurisdiction to stop (*p*).

By the 23 & 24 Vict. c. 126, s. 35, the Superior Courts of Common Law and any judge thereof may, upon summary application by rule or order, exercise such and the like jurisdiction as may be exercised by the Court of Chancery, under the provisions of the ninth part of the Merchant Shipping Act, 1854.

These limitations of the owner's responsibility rest, in England, upon the authority of the statute law only (*q*), for the common law, like the civil law in this respect, held them to be responsible in all these cases. By the general law, however, of the maritime nations of continental Europe, the liability of

(*o*) *Hill v. Audus*, 1 K. & J. 263.

(*p*) *Leycester v. Logan*, 3 K. & J. 446, the costs of the suit must be borne by the plaintiff, so also must the costs of the action stopped, *The African Steam*

Ship Company v. Swanzy, 2 K. & J. 660.

(*q*) *Per* Abbott, C. J., in *Gale v. Laurie*, 5 B. & C. 164, *per* Lord Stowell in *The Dundee*, 1 Hag. 121. It is the same in America, 3 Kent's Comm. 217.

owners for the wrongful acts of the master is limited to the value of the ship and freight, and they may discharge themselves by abandoning them to the creditor (*r*).

Construction
of earlier sta-
tutes.

In Courts of
law.

It will be useful to mention here some of the cases decided upon provisions in the earlier statutes, which are analogous to those contained in the Merchant Shipping Act, 1854. It was held that the words of the first section of the 7 Geo. 2, c. 15, were wide enough to limit the liability of the owners for a robbery committed by strangers in concert with one of the mariners who shared in the spoil (*s*), and that the 26 Geo. 3, c. 86, related only to ships usually employed in sea voyages, and not to small craft, lighters and boats concerned in inland navigation (*t*). In estimating the value of the ship within the meaning of these acts, fishing stores carried on board, not as merchandize, but for the accomplishment of the objects of the voyage, were considered to be included; indeed, whatever was on board for the object of the voyage and adventure, belonging to the owners, was held to constitute a part of the ship and appurtenances within the meaning of the statutes (*u*). In calculating the value of the freight, money actually paid in advance was taken into account (*x*); and where the completion of the voyage was prevented by the tortious sale of the ship, the extent to which the owners were held to be liable was the value of the ship at the time of the sale, and the freight she would have earned had she completed the voyage, not the amount which was calculated on at its commencement (*y*). Where one of several owners was also master, and a loss occurred by his misconduct, it was held that his innocent co-owners were protected, but that he himself was not (*z*). It was also held that the value of the ship was to

(*r*) See *Emérigon, Contrats à la grosse*, c. 4, s. 11, where the early maritime laws are cited. *Boulay Paty, Cours de Droit Commercial Maritime*, vol. i. tit. 3, sec. 1, (Ed. 1834;) *Code de Comm.* art. 216.

(*s*) *Sutton v. Mitchell*, 1 T. R. 18.

(*t*) *Hunter v. McGowan*, 1 Bligh. 573.

(*u*) *Per Abbott, C. J.*, in *Gale v. Laurie*, 5 B. & C. 164. In a case in Chancery, a ship's chronometer was considered to be included in an assignment in which "appendages and appurtenances" were mentioned. *Langton v. Horton*, 11 L. J., N. S., Ch. 299; *S. C.*, 1 Hare, 549, where this point is not

noticed. *Richardson v. Clarke*, 15 Maine (American) Rep. 44, is *contra*; see also *Langton v. Horton*, 5 Beav. 9, where in a bill of sale the word "appurtenances" was held not to include a cargo of oil which was acquired during the adventure. See also *ante*, p. 33. The M. S. Act, 1854, did not use the word "appurtenances." The liability of the owners was limited by it to the value of the "ship and freight."

(*x*) *Wilson v. Dickson*, 2 B. & A. 2.

(*y*) *Cannan v. Meaburn*, 1 Bing. 465.

(*z*) *Wilson v. Dickson*, *ubi supra*; *The Triune*, 3 Hagg. 114.

be calculated at the time of the loss (a); but that this rule was not to be construed so as to exempt the owners from all liability if their ship foundered at the time of the accident, but that they were in such a case liable to the extent of the value immediately before the collision (b). It was probably intended under the earlier acts that the value should be taken at the commencement of the voyage. Now, as we have seen (c), the limit of the shipowner's liability is not the value of the ship and freight, but a sum varying with the tonnage of the ship.

The protection afforded by the 26 Geo. 3, c. 86, s. 2, in cases of fire, was held to be confined to cases in which the fire arose on board the ship, and, consequently, not to extend to a casual fire occurring on board a lighter employed by the shipowners to convey the goods from the shore to the ship (d).

Upon the Merchant Shipping Act, 1854, there have, as yet, been few decisions. It has been held, under sect. 503 of that statute, which protects shipowners from liability for loss of gold, silver, &c. by reason of robbery, unless the "true nature and value" of the article is inserted in the bills of lading, or otherwise declared in writing by the shipper, that it is not sufficient to describe a parcel of gold as so much "gold dust," without stating its value (e).

In the Admiralty Courts, where the proceedings are *in rem* (a mode of remedy not originally given as a measure of the damage, but as the best security for indemnity that could be obtained, as the owner might be beyond the reach of the law), the liability of the owner is also modified by the operation of these statutes: but, subject to this modification, the rights of a person in possession of a decree of those Courts in a cause of damage, are co-extensive with the rights of the owner himself (f). They do not, however, override the claim of a stranger who has, subsequently to the collision, repaired the ship on the security of a bottomry bond (g).

In Courts of Admiralty.

(a) *Wilson v. Dickson*, 2 B. & A. 2; *Dobree v. Schroeder*, 6 Sim. 291. In *Dobree v. Schroeder*, 2 Myl. & C. 489, it was held that the value of the ship was the price at which she could be sold, and that it was to be ascertained, not by making deductions from the cost price proportioned to her age, but by a valuation and appraisement.

(b) *Brown v. Wilkinson*, 15 M. & W.

391; *The Mary Caroline*, 3 W. Rob. 101.

(c) *Ante*, p. 52; M. S. Act Amendment Act, 1862, s. 54.

(d) *Morewood v. Pollok*, 1 E. & B. 743.

(e) *Williams v. The African Steam Ship Company*, 1 H. & N. 300.

(f) *The Aline*, 1 W. Rob. 111, and see *post*, Chap. IX., COLLISION.

(g) *Ib.*

In these Courts the owners of vessels damaged by collision may proceed against the owners of the ship in fault, or against the master personally, or against the ship herself (*h*); and it is important to observe that the personal liability of the owners for the costs of recovering compensation is not removed by the statutes, and they may become, in this way, answerable beyond the statutory limit of liability (*i*). It was held, under the 53 Geo. 3, c. 159, that a Court of law ought not, by reason of the pendency of a suit in equity under that statute, to stay proceedings in an action at law against the owners to recover damages for an injury to goods (*k*). We have seen that, under the Merchant Shipping Act, 1854, the Court of Chancery may, in certain cases, entertain proceedings at the suit of the owners, for the purpose of determining the amount of their liability, and stop all actions and suits pending in other Courts in relation to the same subject-matter, and that these powers may, by the 23 & 24 Vict. c. 126, s. 35, be exercised by the Courts of law and the judges thereof (*l*).

The earlier acts extended to Ireland (*m*); but did not apply to foreign ships or owners (*n*).

Ships to which protection of statutes extend.

The provisions of the Merchant Shipping Act, 1854, limiting the liability of owners, were expressly declared by sect. 516 not to extend to British ships, not being recognized British ships within the meaning of that statute (*o*). And as the limitations of the owners' liability where a fire occurs on board ship, and where gold, silver, watches, jewels and precious stones are stolen or embezzled, still depend upon sect. 503 of that act, the statutory protection does not extend, in these cases, to foreign ships. But we have already seen (*p*) that the provisions limiting the liability of shipowners, which are contained in the Merchant Shipping Act Amendment Act, 1862, and which

(*h*) *The Volant*, 1 W. Rob. 387; *The Mellona*, 6 Notes of Cases, 67.

(*i*) *The Dundee*, 2 Hagg. 137; *Ex parte Rayne*, 1 Q. B. 982.

(*k*) *Thiseldon v. Gibbons*, 8 Dowl. 419.

(*l*) *Ante*, p. 55.

(*m*) 6 & 7 Will. 4, c. 61.

(*n*) *The Carl Johan*, cited in argument in *The Dundee*, 1 Hagg. 113, and in the judgment in *The Girolamo*, 3 Hagg. 186.

(*o*) See *Cope v. Doherty*, 4 K. & J. 357; 2 De G. & J. 614. A British ship within the meaning of the M. S.

Act, 1854, is a ship belonging wholly to natural-born British subjects, or persons made denizen or naturalized, or bodies corporate established under, subject to the laws of, and having their principal place of business in, the United Kingdom or some British possession. See *ante*, p. 4. No ship required by that act to be registered is moreover to be recognized as a British ship, unless registered, see s. 19.

(*p*) *Ante*, p. 51.

are mentioned above (q), are applicable to all ships whether British or foreign.

The provisions of the Admiralty Court Act, 1861 (24 Vict. c. 10), which have extended and defined the powers of the Court of Admiralty, will be found in a later part of this Chapter (r).

We shall see in subsequent Chapters how far the responsibility of owners is limited by the express terms of the ordinary contracts for carriage, and by the operation of the provisions of the Merchant Shipping Act, 1854, relating to pilots; and also what bearing the statutes to which we have referred have upon questions of collision (s).

Liability under Pilot Acts, &c.

We proceed to consider the liability of the owners for work and repairs done, and for stores furnished to the ship. In considering this subject, it is important to recollect that legal ownership by itself does not create any liability for the ship's debts. Strictly speaking, no liability arises from the mere fact of ownership (t). Some misapprehension on this point existed formerly, but it is now settled that the question as to the liability for repairs and necessaries is to be dealt with in the same way as before the passing of the Registry Acts, and that the inquiry always is, who made the contract? upon whose credit was the work done? and upon these questions the statutes requiring registration, which have been in force from time to time, have *directly* no bearing (u), though indirectly their operation is fre-

LIABILITY FOR REPAIRS AND NECESSARIES.

No liability by reason of mere legal ownership.

(q) M. S. Act Amendment Act, 1862, s. 54. See also *The Amalia*, 12 W. R. 24, in which it was held by the Privy Council, that the provisions of this section apply to a claim made by the owners of a foreign ship against a British ship, in respect of a collision, which occurred beyond the limits of British jurisdiction.

(r) *Post*, p. 69.

(s) See *post*, Chap. VI., CONTRACT OF AFFREIGHTMENT; Chap. V., PILOT; Chap. IX., COLLISION.

(t) *Per* Bayley, J., in *Briggs v. Wilkinson*, 7 B. & C. 35. See also *Holt on Shipping*, 197.

(u) *Briggs v. Wilkinson*, 7 B. & C. 30; 3 Kent's Comm. 133; *Reeve v. Davis*, 1 A. & E. 312; *Jennings v. Griffiths*, R. & Moo. 43; *Young v. Brander*, 8 East, 10; *Westerdell v. Dale*, 7 T. R. 306; *Annett*

v. Carstairs, 3 Camp. 354; *Rennie v. Young*, 2 De G. & J. 136. So in the analogous case of a person whose name appears in the Stamp Office return as a proprietor of a newspaper, he is not therefore liable in respect of a contract relating to it, made after his interest has ceased, and, in fact, with other parties. *Holcroft v. Hoggins*, 2 C. B. 488. In some cases registered ownership has been treated as creating a *prima facie* liability; *Cox v. Reid*, 1 C. & P. 602; *Ex parte Machell*, 2 Ves. & B. 216, and the judgments in *Frost v. Oliver*, 2 E. & B. 301. Whether this expression be strictly accurate may be doubted, but it is admitted on all hands, that if there be such a *prima facie* liability, it is not conclusive, but may be rebutted by the special circumstances of each case. In

quently important, as the repairs are generally done by the legal owner. In other words, the legal owner is usually liable, not because he is the registered owner, but because he is usually the real contractor.

It will be found accordingly that parties have been held liable, because the work was done on their credit, although they had parted with their shares; and that, on the other hand, a similar liability has attached upon persons beneficially interested, but not entitled under any legal transfer.

These rules have been often recognized, and have been acted upon in some important recent cases. They apply to the cases of mortgagees and lessees of ships, who are, in fact, so far as this question is concerned, limited or temporary owners(x). The difficulty in practice has always been to apply these principles to the complicated facts of particular cases.

In the decided cases the attempt has generally been either to infer a liability from mere registered ownership, or to show that the persons personally engaged in the transaction were clothed with some express or implied authority from the parties sought to be charged.

Mortgagees.

Thus, where the managing owner mortgaged his interest, and the mortgagee caused the transfer to be duly indorsed on the certificate of registry, but the mortgagor continued, as before, to manage the concerns of the ship, and the mortgagee did not interfere or take possession, it was held, that he was not liable

Rich v. Coe, 2 Cowp. 639, Lord Mansfield said, "Whoever supplies a ship with necessaries has a treble security; 1, the person of the master; 2, the specific ship; 3, the personal security of the owners, whether they know of the supply or not." It must be recollected, however, that if this observation includes mere legal owners, the latter decisions establish that they are not liable, unless the contract is shown to be made with their express or implied authority; and, further, that there may be cases in which the master, acting as agent for the owners, incurs no personal liability; as, for instance, where no credit is given to him, or there is an express stipulation that he shall not be personally liable. It is perfectly open to the parties to contract, so as to confine the responsibility either to the master or the owner. *Hoskins v. Slayton*, Rep. temp. Hardw. 376; *Farmer v. Davies*, 1 T. R. 108, and see the observations of Lord Ellen-

borough, C. J., in *Hussey v. Christie*, 9 East, 432; Story on Agency, ss. 294, 296. In the words of an early case, "The repairer of a ship has *prima facie* his election to sue the master who employs him, or the owners, but if he undertakes it on a special promise from either, the other is discharged." *Garnham v. Bennett*, 2 Str. 816. The master is liable, in the first instance, if it does not appear that any credit was given to the owners, *per Tindal, C. J.*, in *Essery v. Cobb*, 4 C. & P. 358.

(x) *Briggs v. Wilkinson*, 7 B. & C. 30. See as to when the charterer becomes owner *pro hac vice*, the cases cited, *post*, Chap. VI., CONTRACT OF AFFREIGHTMENT, and *Parish v. Crawford*, 2 Stra. 1251; *Vallejo v. Wheeler*, Cowp. 143. As to the enforcement of equities against owners and mortgagees of ships in respect of their equitable interests therein, see the M. S. Act Amendment Act, 1862, s. 3, and *ante*, p. 35.

for repairs and necessaries supplied under the orders of the mortgagor (*y*); and a mortgagor who remains in ostensible possession of the ship may confer a right of lien against her for necessary repairs (*z*). So, on the other hand, where a legal owner parted with a beneficial ownership, by contracting to sell his shares, and by taking a bill of exchange for part of the price, and before a bill of sale had been executed, repairs were done by the directions of the managing owner, and there was no evidence to show that he had any authority from the legal owner to order them, it was held, that the latter was not liable (*a*); and in accordance with this principle, a person who holds himself out as owner cannot escape from liability by setting up that the conveyance to him was void for non-conformity with the provisions of the Registry Acts; but he is not liable unless he holds himself out as owner, or credit is given to him individually (*b*). In a case in bankruptcy (*c*), the rule was laid down by Lord Eldon in these terms, "Where the repairs are executed in a port in this country, the vessel, till parted with, is specifically chargeable with their amount; but the lien is lost with the possession. Where the repairs are ordered by the master, he, in the first place, incurs a personal liability, and considering him in general as the servant or agent of the owners in the employment and management of the ship, they also become responsible for his orders, unless they are expressly excluded by the terms of the contract. The same observation applies where a part owner gives the order; the liability attaches against them all, unless it be expressly provided against."

Legal and
beneficial
owners.

These principles receive considerable illustration from some modern cases upon the subject. In one of these (*d*) the legal owner of a ship was sued for the price of rigging supplied to the ship subsequently to the execution by him of an invalid executory contract for the sale of the ship. The rigging was necessary for the ship, and had been supplied to her whilst she

Recent
decisions.

(*y*) *Briggs v. Wilkinson*, 7 B. & C. 30.

(*z*) *Williams v. Allsup*, 10 C. B., N. S. 417.

(*a*) *Curling v. Robertson*, 7 M. & Gr. 336; *Baker v. Buckle*, 7 Moore, 349.

(*b*) *Harrington v. Fry*, 2 Bing. 179. In this case the defendant was held not to be liable. The decision has been questioned, on the ground that he was,

as regarded strangers, substantially a dormant or secret part owner, and that credit given to one part owner is credit given to all. See Collyer on Part. 686; see also *McIver v. Humble*, 16 East, 169.

(*c*) *Ex parte Bland*, 2 Rose, 92. See also *Thompson v. Finden*, 4 C. & P. 158.

(*d*) *Frost v. Oliver*, 2 E. & B. 301.

was in dock in London, on the order of the acting and registered master. The defendant was at this time the registered owner. The plaintiff had, about the time of the supply of the goods (but whether before or after was uncertain), inspected the register. Before the goods were supplied the defendant had entered into an agreement (which was, by reason of the Registration Acts then in force, not binding, as it did not recite the certificate of registration) to sell the ship to a third person to be employed as an emigrant ship, the defendant agreeing to repair her so that she should be approved of by the Emigration Commissioners. The master had been appointed by the intended purchaser, and the defendant had never seen him or desired him to order anything for the ship; but there was evidence to show that the name of the master had been put on the register with the concurrence of the defendant, and that whilst he was acting as master the defendant had, concurrently with the purchaser, kept possession of the ship, having on board of her agents who gave orders respecting other repairs which were being done to her. It appeared, also, that the dock dues had been paid by the defendant; that the ship, whilst in dock, had been new coppered, and had had other rigging supplied to her at the expense of the defendant, and that the rigging in respect of which the action was brought ought to have been supplied by the defendant, under the agreement between him and the intended purchaser; and that some time after the supply of the rigging, the contract of purchase not having been completed, the defendant took exclusive possession of the ship, and sent her abroad under another master, carrying with her the cordage in question. Upon these facts the judges differed as to whether there was any evidence that the rigging had been supplied on the credit of the defendant, or that he had given authority to the master to pledge his credit. Lord Campbell, C. J., and Wightman and Crompton, JJ., were of opinion that there was evidence to go to the jury of his liability. Erle, J., was of a contrary opinion, holding that the evidence showed, in fact, a contract by the master on behalf of the purchaser who had appointed him, and that there was no evidence from which it could be inferred that the master had authority to bind the legal owner. Shortly after this case an action was brought against the same defendant by another tradesman for goods supplied to the same ship upon the order of the master, under

substantially similar circumstances(e). The case was tried before Lord Campbell, C. J., and he directed the jury that the defendant was not liable merely by reason of his being the registered owner, nor was he liable merely by the orders having been given by the registered master, but that he was liable if the master had acted with his privity and consent, and the goods had been supplied upon the credit of the owner by the *bonâ fide* orders of the master, given with the privity of the owner, and were necessary and proper for the ship under the circumstances; and that, although the facts given in evidence by the defendant were believed, he was not conclusively entitled in point of law to a verdict. To this ruling a bill of exceptions was tendered, and the Court of Exchequer Chamber directed a new trial, holding that the direction was not sufficient, and that there was no evidence that the master had acted as the *defendant's* master of the ship. The Court, after referring to the direction given to the jury as to the circumstances under which they might find the defendant liable, proceeded in the following terms:—"Now we think that, although all these circumstances existed, yet it would not be enough to render the defendant liable unless the person acted as *the defendant's* master of the ship with his privity and consent, and the goods and work were supplied to and done upon the ship, not merely upon *the credit of the owner* by the *bonâ fide* orders of the master given with the privity of the owner, but as on a contract with the owner on orders given by the master *as for him*. Now in this case, on the evidence, it appears that the defendant did not, by word or deed, in any way hold out the master *as his master*." The Court also observed, that it did not think that the direction that the defendant was not conclusively entitled in point of law to a verdict, if the facts given in evidence on his behalf were believed, was correct, "for as there was only evidence of an actual authority, and no evidence of such a holding out of the master by the defendant as his agent as to preclude the defendant from denying the agency, the real question for the jury was, whether the master was in fact the defendant's agent; and if the defendant's evidence was believed he was not."

In a later case (f) an action was brought against a person,

(e) *Mitcheson v. Oliver*, 5 E. & B. 419. also *Chapman v. Callis*, 9 C. B., N. S.
 (f) *Myers v. Willis*, 17 C. B. 77, affirmed Cam. Scacc., 18 C. B. 886. See 769.

who was alleged to be the owner of a ship, for damages claimed in respect of the non-conveyance of goods which the master of the ship had agreed to carry under a charter-party executed by him at Valparaiso. The facts appeared to be, that whilst the ship was at sea the registered owner had applied to the defendant for an advance, and had executed to him an absolute bill of sale of the ship, which was afterwards registered by the defendant. The bill of sale, although in form absolute, was only intended as a collateral security to the defendant for the money advanced by him. Subsequently to the registration of the bill of sale the master entered into the charter-party under which the plaintiff claimed, both parties being ignorant of the then state of the ownership of the ship. The Court held, that the defendant was not liable; that it was not bound by the register, but might look at the real transaction between the parties; and that, looking at all the circumstances, it appeared that it was not intended that the defendant should become the real owner of the ship, but only that he should be interested in her to the extent of his advance; and that, therefore, it was manifest that he could not have intended to adopt the master as his agent and make himself liable for his acts. Upon the same principles it was held (g), that the mere fact of a person being registered as the part owner of a ship, under a bill of sale, which appeared to have been in fact given only as a security for advances, did not give to his co-owner authority to pledge his credit for necessary repairs. In another case (h) it appeared that repairs had been done under the superintendence of the master to a ship of which the defendant owned eight sixty-fourths, by the direction of the owner of the remaining sixty-fourths, who had always acted as the managing owner. Before the repairs were ordered the defendant had informed his co-owner that it was not his intention to sail the ship again, and had offered to sell his shares to his co-owner, to which the latter had assented, although the agreement had not ultimately been carried out. Shortly after the commencement of the repairs the defendant had given notice to the plaintiff that he would not pay for them. The Court held that the defendant was not liable, for that his co-owner had, under the circumstances, no authority to bind him, and there was nothing in the conduct of the defendant to justify

(g) *Hackwood v. Lyall*, 17 C. B. 124. and see the observations of Byles, J., in
 (h) *Brodie v. Howard*, 17 C. B. 109, *Whitwell v. Perrin*, 4 C. B., N. S. 416.

the plaintiff in considering that he was one of the contracting parties. In another case (i), a ship sailed from England for a foreign port, the master having a power of attorney to act as agent for the then registered owner. Subsequently the defendant purchased the vessel, was registered as owner, and afterwards resold the ship. An action was brought against the defendant for necessities supplied to the ship abroad on the order of the master, at a time when the defendant was the registered owner. It was held, that he was not liable, the master not appearing to have been at this time his agent in fact. But where the defendant was not only beneficially interested, but knew that another part owner was acting as the ship's husband, and had himself received a share of the profits, it was held, that there was evidence to go to the jury that the ship's husband had authority to contract for necessities on behalf of the owners; and the co-owners were held liable, although part of the supplies had been paid for by bills drawn by the ship's husband upon the brokers of the ship, and on the bankruptcy of the latter the plaintiff had proved against their estate for the balance (k).

We have already seen (l) that where a transfer is made only as a security for the payment of debts, the transferee does not become, nor does the transferor cease to be, owner, except so far as may be necessary to render his security available (m). Where mortgagees are not in possession, and have not personally interfered, their liability depends upon whether a contract, either express or implied, was entered into on their behalf (n); for no mortgagee is, merely as such, liable; and, therefore, where the original owner assigned by bill of sale all his interest,

(i) *Mackenzie v. Pooley*, 11 Ex. 638.

(k) *Whitwell v. Perrin*, 4 C. B., N. S. 412.

(l) *Ante*, p. 36.

(m) M. S. Act, 1854, s. 70. Under the 6 Geo. 4, c. 110, it was held, that a mortgagee was only an owner to the extent of the value mortgaged. *Irving v. Richardson*, 2 B. & Ad. 193. The M. S. Act, 1854, gives a form of mortgage which is different from the form which was in use before that act (see Form, App., p. cclxi.) The statutory form now in use does not, in terms, transfer the ship to the mortgagee. The mortgagor "mortgages" the ship or shares to the mortgagee.

(n) 3 Kent's Comm. 136. It is there

said, "If there has been no dealing with the mortgagor, in the character of owner, but the credit has been given to the person who may be owner, it is a point still remaining open for discussion, whether the liability will attach to the beneficial or to the legal owner." It is only to solve the question *in appearance* to say that in such a case the ordinary rule as to undiscovered principals would be applied, and that that party would be held liable for whom the master was then acting as agent: for in cases of change of ownership uncommunicated to the master there is often much practical difficulty in determining whose agent he was on any particular occasion.

and afterwards sails and rigging were furnished on his account, and on his credit alone, it was held, that the assignee could not be charged with the price of these goods (*o*). And a mere mortgagee, who did not take possession, was held not to be liable for necessaries supplied for the use of the ship previously to a re-transfer (*p*). Where a person, who was mortgagee as well as broker for the ship, gave directions for repairs, it was held that the question for the jury was, whether he acted only as broker, or as a person having an interest in the ship (*q*). And where a purchaser had entered on the register an absolute bill of sale, he was allowed to prove, in order to show that the repairs were not done on his credit, that by a defeasance, not mentioned on the register, he had only a qualified property (*r*). And a person who had executed a bill of sale as the owner of a share, was held not to be estopped from showing that his name was inserted in the register without his consent, and that he had executed the deed for the purpose only of divesting himself of any supposed title (*s*). These cases are decisions under the old Registry Acts, but the principles of them are applicable under the statutes now in force.

Lessees.

The liability of the owners for repairs when the ship has been let to third persons depends also upon whether the contract for repairs is, in fact, made with them, or with the lessee. Thus, a registered owner, who had chartered the ship to the captain for a certain number of voyages at a fixed rent, was held not to be liable for stores furnished under the captain's orders during the existence of the charter-party; since, under the circumstances, the captain could not be considered to be his servant (*t*). So, on the other hand, where a ship was captured, and afterwards liberated, and abandoned to underwriters by the owners on notice of the capture, it was held, that they were still liable

(*o*) *Baker v. Buckle*, 7 Moore, 349. The case of *Dowson v. Leake*, 1 Dowl. & R. N. P., a note of which will also be found in Holt on Shipping, p. 198, *nomine Dowson v. Longster*, has some bearing on this point, but the question there was one of fact rather than of law.

(*p*) *Chinnery v. Blackburne*, 1 H. Bl. 117, note; *Twentyman v. Hart*, 1 Stark. 366; *Jackson v. Vernon*, 1 H. Bl. 114; *Annett v. Carestairs*, 3 Camp. 354.

(*q*) *Castle v. Duke*, 5 C. & P. 359. The weight of the American decisions has been in favour of the position that a mortgagee, out of possession, is not liable

for repairs or necessaries procured on the order of the master, and not upon the particular credit of the mortgagee, who has not been in receipt of the freight; though the rule is otherwise where the mortgagee is in possession, and the vessel is employed on his service. 3 Kent's Comm. 134, 135.

(*r*) *Cox v. Reid*, R. & Moo. 199.

(*s*) *Rands v. Thomas*, 5 M. & S. 244.

(*t*) *Frazer v. Marsh*, 2 Camp. 517; S. C., 13 East, 238; *Reeve v. Davis*, 1 A. & E. 312, and *post*, Chap. VI., CONTRACT OF AFFREIGHTMENT.

for stores and necessities ordered by the supercargo after the abandonment (*u*). And in a case at Nisi Prius, the owners of a Post Office packet were considered to be liable for stores ordered by the captain, although he was not appointed by them, but by the Postmaster-General (*x*). We shall see, in subsequent Chapters (*y*), in what cases the charterers of ships are to be considered as owners *pro hac vice*, and how far their liability to third persons on contracts relating to the ship, or for injuries occasioned by her mismanagement, is affected by this consideration. Owners *pro hac vice*.

When once the liability is established, each owner is by the law of England, which differs in this respect from the civil law, liable *in solido* for the whole amount of the debt, without reference to the proportion of his interest, or to any stipulations between himself and the other owners (*z*). So, the owners cannot qualify their liability by any arrangement with their agents. Thus, where an owner agreed with his agent that the latter should pay for the repairs, on having the ship transferred to him, it was held that a creditor of the owner must look to him, and could not sue the agent (*a*). And if persons separately interested in aliquot parts of a ship employ a joint agent, they are, at law, liable each for the whole of the debt incurred (*b*). A Court of equity, however, would distribute the liability rateably (*c*). Extent of liability.

By the civil law, and the law of those countries which have adopted its principles, a lien upon the ship is given without any express contract to those who repair her, or furnish her Material men, whether they have a lien.

(*u*) *Mitchell v. Glennie*, 1 Stark. 230.

(*x*) *Stokes v. Carne*, 2 Camp. 389.

(*y*) See *post*, Chapters VI. and IX., CONTRACT OF AFFREIGHTMENT and COLLISION.

(*z*) *Doddington v. Hallett*, 1 Ves. sen. 498; *Thompson v. Finden*, 4 C. & P. 158. The Scotch law is the same; 2 Bell's Comm. 655; also the American. In France and Holland part owners are liable to the extent only of their shares. 3 Kent's Comm. 155. The observations in the text must now be read subject to the limitations imposed on the liability of members of corporations constituted under the Joint-Stock Companies Act, 1856, relating to companies with limited

liability. (19 & 20 Vict. c. 47.)

(*a*) *Rattenbury v. Fenton*, 3 Mylne & K. 505. See also *Stewart v. Hall*, 2 Dow. 29.

(*b*) *Pasmore v. Bousfield*, 1 Stark. 296; Bac. Abr. tit. *Merchant*, D.

(*c*) *Speerman v. Degrove*, 2 Vern. 643; *British Empire Shipping Company v. Somes*, E. B. & E. 353, 367; affirmed Dom. Proc., 30 L. J., Q. B. 229. A shipwright is not entitled to be paid for the use of his dock while he detains the ship under such lien against the will of the owner, unless there is some special contract, custom, or usage to authorize such claim. *Id.*

Rule at law.

with necessaries, either at home or abroad (*d*). But, in England, the rule is different. The master may, in cases of necessity arising abroad, hypothecate or pledge the ship, and so, in effect, give a lien on her: but, at home, no lien for work done in respect of the ship can exist, except in those cases in which, by the general law, a right of this description is allowed. The general rule of law is, that every artificer has a particular lien on any chattel which has been delivered to him in his business, and on which he has expended his labour; and on this principle a shipwright has a lien for repairs, so long as he does not part with the possession of the ship (*e*). But the lien is lost as soon as the possession is parted with; and where the work is done on credit, or there is any usage of trade inconsistent with the lien, it never arises (*f*).

It has been held that, in cases of bankruptcy, creditors who have repaired a ship have an equitable lien on her earnings, not from any doctrine peculiar to the earnings of a ship, but on the general principle of equity, that the joint property of every partnership is liable to the joint creditors; but this right exists only so long as the ship remains the property of the owners to whom the credit was given, and does not extend to freight accruing subsequently to a sale (*g*).

Rule in Court of Admiralty.

The Court of Admiralty has now, after many decisions the other way, adopted the rule of the common law with respect to these liens on the ship herself, and holds that material men, unless in possession, are not entitled to any preference over other creditors; and also that they have no better claim against the proceeds of the ship, when sold, than they had against the ship *in specie* (*h*).

(*d*) 3 Kent's Comm. 168; Dig. 14, 1, 1; 1 Valin's Comm. 363, 367.

(*e*) *Hoare v. Clement*, 2 Show. 338; *Justin v. Ballam*, 1 Salk. 34; *Ex parte Bland*, 2 Rose, 91; *Franklin v. Hosier*, 4 B. & Ald. 341; *Burton v. Snee*, 1 Ves. sen. 154; *Watkinson v. Bernadiston*, 2 P. Wms. 367. The Scotch law is now similar. *Wood v. Creditors of Weir*, 1 Bell's Comm. 527. So in America, 3 Kent's Comm. 169. The security of material men has been the subject of legislative provision in several of the American states. In New York, shipwrights and material men have, by statute, a lien for the amount of their debts, whether the ship is owned within

the state or not, but the lien ceases after due security given, or when the vessel leaves the state. *Ib.* 170.

(*f*) *Raitt v. Mitchell*, 4 Camp. 146. In the American Courts it has been held that giving credit for a fixed time is not inconsistent with a lien, for a lien may exist for a debt *solvendum in futuro*. 3 Kent's Comm. 171, note (*b*). See as to the more extensive lien which is enforced by the Court of Admiralty in cases of collision and the like, *post*, Chap. IX.

(*g*) *Ex parte Hill*, 1 Madd. 61.

(*h*) *The Neptune*, 3 Knapp's P. C. Cases, 94; 3 Hagg. 136.

Formerly the jurisdiction of the Courts of Admiralty in suits relating to repairs and supplies which had not been done or furnished on the high seas, was very doubtful; the Courts of common law holding that the Admiralty had no jurisdiction when the contract had been made within the body of a county, and the Admiralty acting frequently on a contrary rule (i).

Statutory jurisdiction of Admiralty in cases of repairs, &c. to foreign or sea-going ships.

The jurisdiction of that Court has, however, been extended and defined by the 3 & 4 Vict. c. 65, and by the Admiralty Court Act, 1861 (24 Vict. c. 10).

By the 3 & 4 Vict. c. 65, s. 6, the Court of Admiralty was empowered to decide all claims and demands for necessaries supplied to any foreign ship, or sea-going vessel, and to enforce payment thereof, whether she might have been within the body of a county or upon the high seas when they were furnished.

3 & 4 Vict. c. 65.

The jurisdiction given by this statute was held to extend to the supply of necessaries by an English firm to a foreign ship at a port within an English colony (k).

This statute conferred upon the Court of Admiralty a jurisdiction to be employed in every lawful mode for enforcing the payment, either by arresting the person of the owner or his property, in case of necessity; and the Court will exercise this power equitably, and endeavour to protect the interests of all persons having a *bonâ fide* lien upon the property (l).

The sixth section of this act relates exclusively to foreign vessels, and the object of the statute was to provide a remedy against the inconvenience, which frequently occurred where a foreign vessel was driven upon the coasts of this country, and the master having no credit, was under great difficulty in obtaining necessaries for the purpose of refitting her, and of proceeding on the voyage (m). It was held that the Court had no jurisdiction under this act, where the articles were not furnished to a foreign ship in the body of a county, or upon the high seas; and a claim, under this statute, for goods supplied by an English manufacturer to a foreign ship, building in a foreign port, was dismissed with costs (n). A vessel built and registered at New Brunswick, and owned by a mercantile firm

(i) See the Preface to Pritchard's Adm. Digest.

(k) *The Wataga*, Swab. A. R. 165.

(l) See the judgment of Dr. Lushington, *The Alexander*, 1 W. Rob. 294.

(m) See the judgment of Dr. Lushington, *The Ocean*, 2 W. Rob. 368.

(n) See *The Ocean*, 2 W. Rob. 368, and *The India*, 32 L. J., P. M. & A. 185. It was held that the Court had jurisdiction in a suit, brought after the passing of the act, for necessaries supplied before. *The Alexander*, *ubi supra*.

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Court Act,
1861.

residing in Nova Scotia, has been held not to be a foreign sea-going vessel within this act (o).

By the Admiralty Court Act, 1861, the Court of Admiralty has jurisdiction over the following matters:—

Over all claims for the building, equipping, or repairing of any ship, if, at the time of the institution of the cause, the ship or proceeds are under the arrest of the Court (p).

Over any claim for necessaries supplied to any ship elsewhere than in the port to which she belongs, unless it is shown to the satisfaction of the Court, that, at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales. If, however, in any such cause, the plaintiff does not recover 20*l.*, he is not entitled to any costs, unless the judge certifies that the cause was a fit one to be tried in that Court (q).

Over any claim by the owner or consignee, or assignee of any bill of lading of any goods carried into any port of England or Wales in any ship, for damage done to the goods by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of the owner, master, or crew, unless any owner or part owner is domiciled in England or Wales at the institution of the cause. In these cases also, if the plaintiff does not recover 20*l.*, he gets no costs, without a certificate from the judge (r).

Over all claims for damage done by any ship (s), and over all questions arising between co-owners touching the ownership, possession, employment, or earnings, of any ship registered at any port in England or Wales (t).

(o) *The Ocean Queen*, 1 W. Rob. 457. By s. 8 of the 19 & 20 Vict. c. 97, every port within the United Kingdom of Great Britain and Ireland, the Islands of Man, Guernsey, Jersey, Alderney and Sark, and the islands adjacent to any of them, being part of the Queen's dominions, is, as to these matters, a home port.

(p) 24 Vict. c. 10, s. 4. The word "ship," as used in this act, includes every description of vessel used in navigation not propelled by oars. See s. 2.

(q) 24 Vict. c. 10, s. 5.

(r) *Ib.* s. 6. See as to the meaning of the words "breach of duty or breach of contract," *The Kasan* and *The Tigress*, 32 L. J., P. M. & A. 97, and *The Norway*, 12 W. R. 719.

(s) *Ib.* s. 7.

(t) *Ib.* s. 8. The Court may in these cases settle all outstanding accounts, and direct the ship or any share to be sold. See s. 8. Power is given by the statute to the Court over questions of salvage of life, claims by seamen for wages, and registered mortgages, whether the ship or proceeds are under arrest or not; *ib.* ss. 9, 10, and 11; and the powers conferred upon the Court of Chancery by the Ninth Part of the M. S. Act, 1854, and by ss. 62, 63, 64, and 65 of that act, (which relate to the sale of ships when any property in them becomes vested in unqualified owners, and to orders by the Court prohibiting the transfer of ships or shares,) are extended to the Court of Admiralty. *Ib.* ss. 12 and 13.

The term "*necessaries*" is strictly applicable only to anchors, cables, rigging, and matters of this description; but it may also include money expended upon necessities. It includes all that is fit and proper for the service in which the ship is engaged, and that the owner, as a prudent man, would have ordered if present (*u*); and the onus of proving that the articles supplied were, under the circumstances, necessities, lies both in the Admiralty and the Common Law Courts, upon the person who supplies them (*v*). Food and medicine supplied to sailors who had met with a serious accident on board, so that there was no probability that they would be able to resume their duties for that voyage, have been held not to be necessities (*x*). In all cases, satisfactory proof must be given that the necessities were wanting, or that the money was *bonâ fide* advanced for the purpose of procuring them (*y*). A suit cannot be sustained for money paid to discharge a debt incurred for necessities (*z*).

What are necessities.

We have already seen that all ships are considered to be divided into sixty-four parts or shares; where these shares do not all belong to the same person, part ownership exists.

PART OWNERS.

By sect. 37 of the Merchant Shipping Act, 1854, the number of registered owners is limited to thirty-two, and no person is entitled to be registered as the owner of any fractional part of a share in a ship; but these rules are subject to the provisions as to joint owners and owners by transmission, and do not affect the beneficial title of any number of persons, or of companies represented by or claiming under registered owners or joint owners; and bodies corporate may be registered by their corporate name (*a*).

Division of shares.

(*u*) *The Sophie*, 1 W. Rob. 368; *The Alexander*, 1 W. Rob. 294. As to what are "*necessaries*," see *supra*. In *The Comtesse de Frégevill*, 1 Lush. A. R. 329, it was said that necessities mean articles immediately necessary for the ship, as contradistinguished from those merely necessary for the voyage. Where a firm in England had accepted and paid a bill of exchange, drawn on them by the master of a foreign ship abroad, to procure necessities, it was held that they might sue the ship in the Admiralty Court as for necessities. *The*

Onni, 1 Lush. A. R. 154.

(*v*) *The Alexander*, *ubi sup.*; *Carey v. White*, 1 Brown, P. C. 284; *Mackintosh v. Mitcheson*, 4 Ex. 175.

(*x*) *Organ v. Brodie*, 10 Ex. 449.

(*y*) *The Sophie*, *ubi sup.*; *The Alexander*, *ubi sup.*

(*z*) *The N. R. Gosfabrick*, 4 Jur., N. S. 742.

(*a*) It is important to bear in mind that, by s. 100 of this act, all persons who are beneficially interested in a ship (otherwise than by way of mortgage), but whose names are not on the register,

Rights and liabilities *inter se*.
Part owners
not partners.

Part owners are not necessarily or usually partners; they are tenants in common, when, as is almost always the case, they take their interests at different times and by separate purchases (b). The meaning of this rule is, that the relation of partnership does not arise between them from the mere fact of their holding shares in the same ship; they *may*, however, be actually in partnership (c), or there may be a partnership in the adventure, and not in the ship (d). In partnership, properly so called, no one can become the partner of another without his consent: but part owners may be imposed upon each other without consent, as by purchase, succession and the like (e).

Jus accrescendi.

There appears to be nothing to render impossible the creation of an ordinary joint tenancy in the shares of a ship (f), but even should this relation exist between the part owners, it is a rule both of the law merchant and of equity, that there is no survivorship between them, for *jus accrescendi inter mercatores, pro beneficio commercii locum non habet* (g). When it is said that this is a rule of law, it is meant that if a joint tenancy existed in a ship, there would be no survivorship of the legal title to the shares, but it must not be supposed that rights of action are affected by this rule. The right of action on any joint contract with merchants, or for any injury to the joint property, survives, and the executor of the deceased could not be joined in the suit (h). The earnings of the ship, whether as freight, cargo or otherwise, follow the general law of partnership (i).

Joint owners.

It is expressly provided by the Merchant Shipping Act, 1854, sect. 37, that any number of persons not exceeding five may be registered as joint owners of a ship, or of a share or shares therein, and that such joint owners shall be considered as only one person, so far as relates to the rule which has been men-

are made liable to all pecuniary penalties imposed by this or any other act, on the owners of ships.

(b) *Green v. Briggs*, 6 Hare, 395; *Owston v. Ogle*, 13 East, 538; *Helme v. Smith*, 7 Bing. 709; *Brodie v. Howard*, 17 C. B. 109; *Collyer on Partn. B. 5*, c. 4; *Smith's Merc. Law*, 197, (6th Edit.)

(c) See the judgment in *Helme v. Smith*, *ubi sup.*

(d) *Holderness v. Shackells*, 8 B. & C. 612.

(e) *Holt on Ship.*, Introduction, 32.

(f) See *Abbott on Ship.* 78; *Smith's Merc. Law*, 197, (6th Edit.)

(g) See the authorities cited in the

last note, and *Co. Litt.* 182 a; *Buckley v. Barber*, 6 Ex. 164.

(h) This is an anomaly; see the judgment of Dampier, J., in *Rez v. Collector of Customs*, 2 M. & S. 225; *Martin v. Cromps*, 1 Ld. Raym. 340; *Buckley v. Barber*, 6 Ex. 164. In the earlier cases this rule was not distinctly recognized; actions were brought jointly by the survivor and the executor, and the non-joinder of the executor was in some instances pleaded in abatement. See *Hall v. Hufam*, 2 Lev. 188, 228; 3 Keb. 787, 798; *Kemp v. Andrews*, 3 Lev. 290; *Smyth v. Milward*, 2 Lutw. 1493.

(i) *Green v. Briggs*, 6 Hare, 395.

tioned as to the number of registered owners, and shall not be entitled to dispose in severalty of their interest in the ship.

Subject to these observations, the ordinary rules respecting *Trover*. tenants in common apply to part owners. Thus one part owner cannot bring *trover* for the value of his share against another, unless there has been an actual destruction of the ship, or some act equivalent to it (*k*). The mere sale of the ship by one of them appears not to be equivalent to a destruction, for, generally, such a sale would only pass the interest of the seller. It would be otherwise if the whole property passed (*l*). Where it appeared that the plaintiff was tenant in common of one moiety, and the defendants of the other, and that they forcibly took the ship out of his possession, and changed her name, and secreted her from him, and that she afterwards got into the hands of a third person, who sent her on a foreign voyage, where she was totally lost, it was left to the jury to consider whether the destruction was not by means of the defendants' acts; and the jury having found that it was, the Court held that the direction was proper, and refused to disturb the verdict (*m*). But where one part owner sued the other for fraudulently and deceitfully carrying the ship beyond the seas without his assent, whereby he lost his share, the Court arrested the judgment, and held, that owing to the trust and confidence which the law supposes to exist between tenants in common, there cannot be any fraud between them, and that, under such circumstances, they have no remedy at law (*n*). Sale not generally a conversion.

Remedies as against each other.

It has been held, that where one part owner objects to the employment of the ship on a particular voyage, but does not expressly dissent, he is liable in equity, if the ship is afterwards lost, for his proportion of the loss (*o*), but that it is otherwise if he expressly dissents (*p*).

It is, as we have seen (*q*), the duty of the majority of the owners to exercise a fair and impartial judgment in the choice Choice of officers.

(*k*) See Litt. s. 323; *Heath v. Hubbard*, 4 East, 110; *Mayhew v. Herrick*, 7 C. B. 229.

(*l*) *Heath v. Hubbard*, *ubi sup.*, 2 Wms. Saund. 47 p, note (*c*); *Barton v. Williams*, 5 B. & A. 395; and see the observation of Parke, B., in *Farrar v. Beswick*, 1 M. & W. 688. There is no market overt for the sale of ships, *ante*, p. 20.

(*m*) *Bernadiston v. Chapman*, C. B., 1 Geo. 1, before King, C. J., cited 4 East, 121.

(*n*) *Graves v. Sawcer*, 1 Lev. 29; *S. C.*, Sir T. Raym. 15. It does not appear distinctly whether the ship was lost; see also *Molloy*, B. 2, c. 1, s. 2.

(*o*) *Shelley v. Winson*, 1 Vern. 297.

(*p*) *Horn v. Gilpin*, Ambler, 255.

(*q*) *Ante*, p. 64.

of the persons to whom they confide the management of the outfit, and the navigation of the ship. This is a duty not only towards others, but as between themselves, and it would seem that any contract calculated actually to interfere with it, and to fetter their judgment, would be held to be void (r).

**Contribution
towards ex-
penses.**

Each owner is also bound, before the commencement of the voyage, to contribute his share of capital for the expenses of the outfit, and, therefore, if one part owner, who is ship's husband, incurs this expense, he may sue the others separately for their share of it (s).

One of several part owners has a right to require that the gross freight or proceeds of the cargo shall be applied in the first place to the payment of the expense of the outfit of the ship for the voyage on which the freight was earned; and the same rule applies to the expenses of repairs to the hull, done with a view to the particular adventure in which the earnings were made, and without which the adventure would not have been undertaken (t). By sect. 515 of the Merchant Shipping Act, 1854, all money paid on account of any loss or damage in respect whereof the liability of the owners is limited by Part IX. of the act, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship, in the same manner as money disbursed for the use thereof.

Part owners may, by the law of England, separate at any time by parting with their shares. The rule of the maritime law was different (u).

**Power to bind
each other.**

Part owners are usually liable for necessary repairs and stores ordered by one of themselves (x). But strictly speaking the simple existence of co-ownership does not give power to one part owner to pledge the credit of the others; for it is clear that, in all cases in which it is sought to make one part owner liable upon the order of another, the real circumstances and position of the parties may be looked to in order to ascertain

(r) See the judgment in *Card v. Hope*, 2 B. & C. 674.

(s) *Helme v. Smith*, 7 Bing. 709.

(t) *Green v. Briggs*, 6 Hare, 395; *Alexander v. Simms*, 5 De G., M. & G. 57. Wages, and the expense of manning the ship, are proper deductions to be made from the gross freight as be-

tween part owners of a ship and the assignee of the freight of another part owner. *Lindsay v. Gibbs*, 22 Beav. 522.

(u) *Molloy*, B. 2, c. 1, s. 3.

(x) See *Ex parte Bland*, 2 Rose, 92; *Story on Agency*, s. 40, and the cases as to repairs cited in the earlier part of this chapter.

whether any agency exists in point of fact. In a recent case, one of two part owners had not done any act to induce the creditor to suppose that the other had power to pledge his credit, and had given notice to his co-owner of his intention not to sail the ship again, and had offered to sell his share in her. It was held that, under these circumstances, he was not liable for repairs subsequently ordered by his co-owner, although the notice of his intention to sell had not been communicated to the creditor (y). The principle and limit of this liability where it exists, is that it is reasonable to suppose that a part owner on the spot is allowed by the absent part owners to order whatever is necessary for the preservation, navigation, and proper employment of the ship, since the common owners of a valuable chattel must be presumed to intend its preservation and profitable employment (z). They cannot, however, bind each other as partners, unless an actual partnership exist, and then the ordinary rules relating to partnerships apply. Thus, one part owner has no authority to order insurances to be effected on behalf of the others, unless there is a partnership between them (a). If, however, the others subsequently adopt the insurance, they are bound by it (b): but, in the absence of any original authority, or subsequent ratification, the broker who effects the insurance can only look to the part owner who employs him, and is liable, on the other hand, to him alone, for the amount received from the underwriters (c).

Where, as is usual, one part owner is appointed ship's husband, he becomes the agent of the others in the management of the ship, and commonly receives some remuneration from his co-owners (d). It is then his duty to see to her proper outfit and equipment, and he has power to bind the others by contracts made within the scope of his agency. He cannot, however, as ship's husband, insure the shares of the other part

Ship's husband.

(y) *Brodie v. Howard*, 17 C. B. 109. See also as to the circumstances from which such an authority is implied. *Preston v. Tamplin*, 2 H. & N. 363. Affirmed in error, *ib.* 684.

(z) See *Holt on Ship*, Introd. 33.

(a) *Hooper v. Lusby*, 4 Camp. 66.

(b) *Robinson v. Gleadow*, 2 Bing. N. C. 156.

(c) *Roberts v. Ogilby*, 9 Price, 269;

and see *Hatsall v. Griffith*, 2 C. & M. 679.

(d) See *Salter v. Adey*, 1 Jur., N. S. 930, where it was held, that a part owner who entered on the duties of ship's husband without any express agreement for remuneration, but with a knowledge that his predecessor had received a commission, was, on an account being taken with his co-owners, entitled to the same commission as his predecessor.

owners, or bind them to the expenses of a law suit (*e*), nor can he, as against other part owners, make an assignment of the whole freight, to secure money advanced to him (*f*). He is only entitled to charge the cost price of supplies to the ship, furnished by him in the course of his business (*g*). In a recent case it was held that a managing owner was entitled in virtue of his general authority to pledge the credit of his co-owner by giving a bond for the release of the ship which had been arrested in the Admiralty Court for a collision at sea (*h*). The fact that a part owner has acted as ship's husband is sufficient evidence of his appointment, without any formal proof; and although a part owner is entitled to refuse to expend money on the repairs of the ship, and to inform the other owners that if they order repairs it will be on their own responsibility, he cannot revoke an authority to make alterations after it has been acted on, and must give distinct evidence of his dissent, in order to avoid a liability for repairs and alterations ordered by the ship's husband (*i*). It has been decided that a director of a company has no right, even with the consent of the board of directors, to appoint himself to the office of ship's husband (*k*).

It was once held that part owners, although tenants in common and not joint tenants, had a right to consider the ship as partnership effects, and as liable to pay all debts which any of them might have incurred on her account, so as to give to those partners who were compelled to pay, a lien in equity on the share of others who had not contributed (*l*). But this decision has been since overruled (*m*).

Bankruptcy.

Where one part owner becomes bankrupt his share passes to the assignees under the bankruptcy without being liable specifically to the claims of the other part owners in respect of their disbursements and liabilities for the ship (*n*); but it is a general rule, that the assignees of a bankrupt partner can obtain no share of the partnership effects until they have satisfied all that is due from him to the partnership. Where oil, the produce

(*e*) *French v. Backhouse*, 5 Bun. 2727;
Bell v. Humphries, 5 Stark. 345; *Camp-*
bell v. Stein, 6 Dow, 135.

(*f*) *Guion v. Trask*, 1 De G., F. & J.
373.

(*g*) *Ritchie v. Couper*, 28 Beav. 344.

(*h*) *Barker v. Highley*, 11 W. R. 968.

(*i*) *Chappell v. Bray*, 6 H. & N. 145.

(*k*) *Benson v. Heathorn*, 1 Y. & C. C. C.
340.

(*l*) *Doddington v. Hallett*, 1 Ves. sen.
497.

(*m*) *Ex parte Young*, 2 Rose, 78, note;
and see *Green v. Briggs*, 6 Hare, 395.

(*n*) *Ex parte Harrison*, 2 Rose, 76;
Story Eq. Jur. 1242.

of a joint adventure, was deposited in a warehouse, separated into shares, put into casks marked with the initials of the several owners, and, by the agreement between them, no partner had a right to his part until he had paid his share of the expense of procuring it, and one of them became bankrupt before his share was actually removed, it was held that the other part owners had a lien on it for the bankrupt owner's proportion of the disbursements of the ship, and were not bound to give it up to his assignees until this was paid (*o*). Where the managing owner received the freight warrants and paid them into a bank in his own name, drawing cheques from time to time, for various sums out of the proceeds, part of which he applied for the use of the ship, and part for other purposes: it was held that the other part owners had no lien on this fund in the hands of the banker, nor any claim against him as their debtor (*p*).

Formerly questions arose as to whether part owners could give evidence for each other (*q*); but as objections on the ground of interest are now removed, and the parties to a suit are competent witnesses in their own case (*r*), it is unnecessary to notice these decisions; it must, however, be recollected, that the admission of one part owner is still not binding on the others (*s*).

Competent witnesses.

In disputes between part owners as to the employment of the ship, the Court of Admiralty exercises a peculiar jurisdiction (*t*). In the words of Lord Tenterden "it has been the constant practice, in disputes between part owners as to the employment of the vessel, where the majority in value of the shareholders are desirous to send the vessel on a voyage to which the minority will not consent, for the Court of Admiralty to arrest the ship at the instance of the latter, and to take from the majority a stipulation in a sum equal to the value of the shares of those who disapprove of the adventure, either to bring back and restore to them the ship, or to pay them the value of their shares. Although the jurisdiction of the Admiralty in such

Admiralty jurisdiction as to employment of ship.

(*o*) *Holderness v. Shackells*, 8 B. & C. 612; *Green v. Briggs*, 6 Hare, 395; see also *Boyd v. Mangles*, 3 Ex. 387.

(*p*) *Ex parte Gribble*, 3 Deac. & Chit. 339, and see *Sims v. Bond*, 5 B. & Ad. 389. As to the transmission of shares in a ship by bankruptcy, see the M. S. Act, 1854, ss. 58—60; mortgages of ships, when duly registered, are exempt from

the operation of the reputed ownership clauses in the bankrupt acts, sect. 72. See also 12 & 13 Vict. c. 106, s. 125.

(*q*) *Atkinson v. Foster*, 1 C. B. 712.

(*r*) 6 & 7 Vict. c. 85; 14 & 15 Vict. c. 99; 16 & 17 Vict. c. 83.

(*s*) *Jagers v. Binnings*, 1 Stark. 64.

(*t*) *Molloy*, B. 2, c. 1, s. 2; *Beawes*, 107.

cases was once doubted, there are several authorities recognizing it; and it may now be taken as settled, that in disputes between part owners as to the employment of a ship, the Court of Admiralty may, by warrant, arrest and detain the ship until security be given to the amount of the value of the shares of those part owners who dissent from the particular employment" (u). If the minority have possession of the ship, and refuse to employ her, the majority may, on a similar warrant, obtain possession and send her to sea, on giving the like security (v). This Court is open all the year round to applications by part owners to restrain the sailing of ships without their consent, until security given to the amount of their respective shares. But where the shares are not ascertained the Court has no jurisdiction of this description, and in such a case the Court of Chancery will restrain the sailing of the ship by injunction until the share of the party complaining shall be ascertained, and security given to the amount of it (x). A dissenting owner is not entitled to any share of the freight earned on the voyage (y). Where, however, he arrests the ship after the other owners have expended money in repairing it and fitting it out, he is bound to pay his proportion of these expenses (z). The law of some countries has gone so far as to endeavour to compromise all interests by compelling, in cases of disagreement, a sale, either of the shares of the minority, or of the whole ship, on the application of a majority of the owners, or sometimes even of a moiety of the interests. But by the law of England there is no power, independently of statute, either in the Court of Chancery or in the Court of Admiralty, to compel a sale in cases of this description; and although the Admiralty Court Act, 1861 (a), has conferred upon that Court jurisdiction to decide all questions arising between co-owners, or any of them, touching the ownership, possession, employment and earnings of any ship

Power of the Courts over the ship in cases of disagreement.

(u) *In re Blanchard*, 2 B. & C. 248, and see *The Apollo*, 1 Hagg. 306. The Court has jurisdiction to take a vessel from a mere wrongdoer, and deliver it to the lawful owner. *Ib.*

(v) *Abbott on Ship*, 101 (7th edit.). It appears that, according to the American law, the minority may employ the ship in like manner, if the majority decline to employ her at all. *Steamboat Orleans v. Phœbus*, 11 Peter's (American) Rep. 175.

(x) *Haly v. Goodson*, 2 Mer. 77;

Christie v. Craig, *Ib.* 137. See, however, *Castelli v. Cook*, 7 Hare, 89. The jurisdiction of the Court of Chancery is undoubted wherever there is an express agreement as to the employment of the ship. *Darby v. Baines*, 9 Hare, 369. See also *Brenan v. Preston*, 2 De G., M. & G. 813.

(y) *Anon.*, 2 Chanc. Cas. 36; *Boson v. Sandford*, Carth. 63.

(z) *Davis v. Johnston*, 4 Sim. 539.

(a) 24 Vict. c. 10, s. 8; *ante*, p. 70.

registered at any port of England or Wales, and to settle all accounts outstanding and unsettled between them, and to direct the ship or any share to be sold, or to make such order as to it shall seem fit, it is apprehended that these powers would not be exercised in a case of mere disagreement between the owners as to the employment of the ship (*b*).

Where a bond was given for the safe return of a ship to a particular port of this kingdom, and the ship having been carried by distress into another port was there arrested in suits for salvage and wages, the Court of Admiralty declined to pronounce the bond forfeited, and held, that while the ship was within the jurisdiction of the Court, safe and unsold, the application was premature (*c*).

The Courts of Chancery and of Admiralty have now, by statute, power to order a sale of any property in a ship or share which becomes vested, by transmission on the death of any owner, or the marriage of any female owner, in any person not qualified to be the owner of a British ship. The application must be made on behalf of the unqualified person, and the Court may deal with it, and with the proceeds of the sale as it thinks just (*d*). The order for sale must vest the right to transfer the property in a nominee of the Court, who may then transfer like a registered owner (*e*). The application for a sale must be made within four weeks after the occurrence of the event on which the transmission of the property has taken place, or within such further time (not exceeding one year from the date of such occurrence) as the Court may allow. If no application for a sale is made, or granted, the share or ship transmitted under the circumstances mentioned above, becomes forfeited (*f*). These powers may be exercised in Ireland by the Court of Chancery, in Scotland by the Court of Session, and in any British possession, by the Court possessing the principal civil jurisdiction therein (*g*).

Power of
Courts of
Chancery and
Admiralty to
sell interest of
unqualified
owners.

(*b*) See the judgment of Sir C. Robinson, in *The Margaret*, 2 Hagg. 276; *Ouston v. Hedden*, 1 Wils. 101. The Scotch and American Courts have exercised the right of compelling a sale, at least where the part owners were equally divided in opinion. 1 Bell's Comm. 503; 3 Kent's Comm. 153, 154.

(*c*) *The Margaret*, 2 Hagg. 276.

(*d*) M. S. Act, 1854, s. 62; Admiralty Court Act, 1861, (24 Vict. c. 10,) s. 12.

(*e*) *Ib.* s. 63.

(*f*) *Ib.* s. 64.

(*g*) *Ib.* s. 62.

To restrain a sale of ship.

The Court of Chancery, and the other Courts referred to above, have also, by statute, a general power to prohibit the dealing with any ship or share for any time to be mentioned in an order made by the Court. Any person interested in the ship may apply for such an order (*h*).

Adjustment of accounts.

The only remedy for part owners to obtain an adjustment of the ship's accounts amongst themselves was, until recently, a suit in equity (*i*). The Court of Admiralty has, however, now jurisdiction in such a case (*j*). Where one of the part owners, who acted as ship's husband, covenanted with the others to make out the ship's accounts, and divide the profits after the ship's return, it was held, that the other owners might sue him at law on this covenant (*k*).

To a bill filed for an account of the profits of the ship all the part owners must be parties (*l*).

Rights and liabilities as regards others.

With respect to the liability of part owners to third parties, we have seen that, when they are liable, their liability is not limited by the extent of their separate shares (*m*).

Actions by.

Part owners should join in actions for any injury to the ship. Before the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), the objection that all were not joined, could in actions of tort be taken only by plea in abatement (*n*). In these actions the misjoinder, or the joinder of too many plaintiffs, and in actions of contract, either the nonjoinder or the misjoinder of plaintiffs, was a fatal objection which might be taken at the trial, or, if it appeared on the pleadings, by demurrer, or in arrest of judgment (*o*). In actions against part owners, the ordinary rules as to the joinder of parties also applied. Where the action was in tort, no advantage could be taken of the omission of some of the joint tort-feasors, or of the joinder of too many defendants; but where the action was on a contract,

Actions against.

(*h*) M. S. Act, 1854, s. 65. These powers are extended to the Court of Admiralty by the Admiralty Court Act, 1861 (24 Vict. c. 10, s. 12).

(*i*) Collyer on Partnership, 683.

(*j*) 24 Vict. c. 10, s. 8. A copartner could not, before this act, originate a suit for accounts in the Admiralty Court. *The Apollo*. 1 Hagg. 306.

(*k*) *Owston v. Ogle*, 13 East, 538.

(*l*) *Moffat v. Farquharson*, 2 Brown C. C. 338; Collyer on Part. 683.

(*m*) *Ante*, p. 67.

(*n*) *Addison v. Overend*, 6 T. R. 766; *Phillips v. Claggett*, 10 M. & W. 102.

(*o*) *Hare v. Celey*, Cro. Eliz. 143; and see the notes to *Cabell v. Vaughan*, 1 Wms. Saund. 291 *h*; 1 Chit. Plead, 14, 75 (7th edit.)

even although the plaintiff shaped his case in tort, the omission of any defendant was ground for a plea in abatement, and the joinder of too many, of nonsuit; for, it was held that the plaintiff could not, by adopting a particular form of remedy, alter the situation of the defendant (*p*).

It is not now necessary that any form of action should be mentioned in the writ (*q*), and different causes of action may be joined in the same suit, provided they are by and against the same parties, and in the same rights (*r*). A defendant may now give notice of nonjoinder of any plaintiff, or plead it in abatement; in all cases of nonjoinder or of misjoinder of plaintiffs, or of defendants, an amendment may be made, if necessary, before or, in some cases, at the trial (*s*); and every action may be brought in the name of all the persons in whom the legal right is supposed to exist, and judgment may be given in favour of the persons in whose name the action is brought, or of one or more of them (*t*).

We have seen that, although there is no survivorship as to the right to the shares in a ship, the remedy in respect of any contract made with all the owners, or for any damage done during their lifetime to the ship, belongs to the survivors only (*u*).

(*p*) *Pozzi v. Shipton*, 8 A. & E. 963.

(*q*) 15 & 16 Vict. c. 76, s. 3.

(*r*) *Ib.* s. 41.

(*s*) *Ib.* ss. 34—39.

(*t*) 23 & 24 Vict. c. 126, s. 19. If any question of misjoinder is raised, the court may adjudge in whose favour judgment is to be given; the defendant is however entitled in these cases, although he is unsuccessful, to his costs occasioned by joining any person in

whose favour judgment is not given, unless the court orders otherwise: *Ib.* This section does not prevent a declaration from being demurrable where it appears on the face of it that the action ought to have been brought by one only of the plaintiffs. *Bellingham v. Clark*, 1 B. & S. 332.

(*u*) See the cases cited *ante*, p. 72, note (*h*); *Buckley v. Barber*, 6 Ex. 164.

CHAPTER III.

THE MASTER.

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THE MASTER. The master, more commonly called the captain, is the person appointed by the owner or owners, to navigate and manage the ship (*a*); and the law regards him as an officer who must render account for the whole charge committed to his care. By reason of his possession of the ship he may bring an action of trespass, or case against a wrongdoer, and may sue for freight earned under a contract to which he is a party (*b*); but he cannot sue for demurrage, unless it be mentioned in the bill of lading (*c*).

(*a*) Molloy, B. 2, c. 2, s. 1; 3 Kent's Comm. 160; the Consolato, c. 16. A full account of his office and duty under the French law will be found in the *Encyclopédie du Droit*, tit. *Capitaine de Navire*. See also Code de Commerce, Art. 221—249. By the M. S. Act, 1854, s. 2, the term "master" includes every person (except a pilot)

having command or charge of any ship.

(*b*) *Pitts v. Gaine*, 1 Ld. Raym. 558; *Shields v. Davis*, 6 Taunt. 65. He may allege in pleading that the goods were carried in his ship.—*Ib.* See also *Seeger v. Duthie*, 8 C. B., N. S. 46, 72.

(*c*) *Brouncker v. Scott*, 4 Taunt. 1; *Jesson v. Solly*, *ib.* 52; *Evans v. Forster*, 1 B. & Ad. 118.

As the master possesses an almost absolute control over the crew and passengers, and very extensive powers over the interests of the owners, and of the merchants in the care of the ship and cargo, and as he is liable, at any time, to be called upon to exercise agencies of a complex character, it is necessary that he should be a person capable of performing these numerous and important duties with skill, energy and good faith.

Nature of office.

We will now consider in their order:—1, *the qualifications of the master*; 2, *his appointment and remuneration*; 3, *his authority over the crew and others on board*; 4, *his duties*, and 5, *his personal liability, and that of the owners, and of the freighters, arising out of his acts*.

First, as to *his qualifications*. Under the 12 & 13 Vict. c. 29 (which is now repealed), it was in all cases necessary that the master of a British registered ship, wherever she was, should be a British subject. This, however, is no longer so (*d*). In most of the countries of maritime Europe there have long existed some legislative requirements as to the fitness and capacity of masters (*e*); in England, however, there were, until lately, no provisions on this subject, and owners, like others who are compelled to employ agents, were left to their own discretion to engage persons on whose skill and fidelity they could rely.

QUALIFICATIONS.

A system of examination was however established, in 1850 by the Mercantile Marine Act, 13 & 14 Vict. c. 93, (which act is now repealed,) under which certificates might be granted by the Board of Trade, upon reports from the local boards.

Examination.

The Merchant Shipping Act, 1854, contains (in Part III.) the chief provisions which now regulate these examinations; under this act, Local Marine Boards are constituted, which consist of certain local officers, together with four persons appointed by the Board of Trade, and six who are elected by shipowners (*f*); these boards are bound to provide, at their

Certificates of competency and service.

(*d*) By the M. S. Act, 1854, s. 44, the master's name must be inserted in the certificate of registry; and, by sect. 46, a change of master must be indorsed on the certificate, and the officers of Customs, at any port under British dominion, may refuse to allow any person

to act as master at such port, unless his name is in or on the certificate.

(*e*) See French Ordonn., 7th August, 1825; Encyclopédie du Droit, tit. Capitaine de Navire; 3 Kent, Comm. 160, note (*a*).

(*f*) M. S. Act, 1854, ss. 110—121.

respective ports, for the examination of masters and mates of "foreign going ships" and of "home trade passenger ships" (*g*). The examination is under the control of the Board of Trade (*h*); it extends to the competency of the applicants; and they must also produce satisfactory evidence of their sobriety, experience, ability and general good conduct on board ship; and when it has been passed, the Board of Trade (except where there is reason to suppose that the report of the local board has been unduly made, when the Board may remit the case to the same or other examiners) grants to the applicants a "certificate of competency;" either as master, first, second or only mate of a foreign going ship, or as master or mate of a home trade passenger ship, as the case may be (*i*).

By the Merchant Shipping Act Amendment Act, 1862, provision is made for the examination of masters and mates at ports where there are no Local Marine Boards. It is provided by that act that the Board of Trade may, if satisfied that serious inconvenience exists at any port in consequence of the distance which applicants for certificates have to travel in order to be examined, send the examiner or examiners of any Local Marine Board to the port where this inconvenience exists; and the examination may thereupon be carried on at that port, in the presence of any persons appointed by the Board of Trade, and in the same manner as any other examination under the act (*j*).

Other certificates, called "certificates of service," may also be granted under the statute, without examination, to persons who, before the 1st of January, 1851, had served as master or mate in the British merchant service, or on board home trade passenger ships. Similar certificates are claimable by all persons who before that date had attained, or who subsequently attain, the rank of lieutenant, master, passed mate or second

See *post*, Chap. IV., CREW, where these provisions are more fully considered.

(*g*) M. S. Act, 1854, s. 131. The term "foreign going ship" includes every ship employed in trading, or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits, that is to say, the coasts of the United Kingdom, the Islands of Guernsey, Jersey, Sark, Alderney and Man, and the continent of Europe between the river Elbe and Brest inclusive. A "home trade passenger ship" means every home trade

ship (that is, every ship employed in trading or going within the above-mentioned limits) employed in carrying passengers. See sect. 2.

(*h*) *Ib.* s. 132, as to fees, see s. 133, and Schedule R., App. p. clxii.

(*i*) M. S. Act, 1854, s. 134. A statement as to the qualifications required in masters and mates of foreign going and home ships has been issued by the Board of Trade, and printed by the Queen's printers.

(*j*) M. S. A. Amendment Act, 1862, s. 17.

master, or any higher rank in the Queen's or the East India Company's service (*k*). No foreign going ship or home trade passenger ship may go to sea from a port in the United Kingdom unless the master, and, in the case of foreign going ships, the first or second mate, or only mate, and in the case of home trade passenger ships, the first or only mate, have certificates of competency or service appropriate to or above their stations in the ship (*l*). The master of every foreign going ship must, upon signing the agreement with the crew, produce to the shipping master these certificates of competency or service. In the case of running agreements, the certificate of any mate first engaged on the second or subsequent voyages must on such voyages be produced in like manner. In the case of home trade passenger ships, the certificates must be produced half-yearly to a shipping master, and the shipping masters are bound to give to the master a certificate of his compliance with these provisions, without which he cannot, in any case, proceed to sea (*m*).

The Merchant Shipping Act, 1854, provided that if the bearer of any of these certificates was shown to have been convicted of any offence, was superseded by any admiralty or naval court, or found upon investigation by the Board of Trade, or any local marine board, to have been guilty of gross misconduct or tyranny, or to have caused by his wrongful act loss, abandonment, or serious damage to any ship, or loss of life, the certificate might be suspended or cancelled (*n*). It also provided that the courts of enquiry which might be instituted under that act, in cases of wreck and casualty, should have the power of calling for and, if they thought fit, of withholding the certificates of any master or mate, to be dealt with as the Board of Trade might think fit (*o*). These provisions have been modified by the Merchant Shipping Act Amendment Act, 1862, which contains the following enactments, with reference to the cancellation and suspension of certificates:—

Cancellation
and suspension
of certificates.

(*k*) M. S. Act, 1854, s. 135.

(*l*) *Ib.* s. 136. Where the tonnage of the ship equals or exceeds 100 tons, at least one officer besides the master must have a proper certificate. *Ib.*, and see the same section as to the penalties incurred by the breach of these provisions. By sect. 137, certificates for foreign going ships are declared to be of higher grade than corresponding certificates for home trade passenger ships. See further as to the duplicates of these

certificates, the granting of copies of them in certain cases, and as to the punishment for false representations made to obtain them. Sects. 138, 139, 140.

(*m*) M. S. Act, 1854, ss. 161, 162.

(*n*) *Ib.* s. 242. The same punishment is imposed if any colonial tribunal reports that such an offence has been committed, and the governor confirms the report. A new certificate may be subsequently granted. *Ib.*

(*o*) M. S. Act, 1854, s. 438.

The power of cancelling or suspending the certificates of masters or mates conferred by the Merchant Shipping Act, 1854, on the Board of Trade is (except in cases in which the masters or mates are shown to have been convicted of any offence) now vested in and to be exercised by the Local Marine Board, or other court or tribunal, by which the case may be investigated, and is not to be exercised by the Board of Trade.

Every such board, court, or tribunal, must, at the conclusion of the case (or as soon as possible afterwards) state in open court the decision to which they have come, and send a full report, with the evidence, to the Board of Trade. If the certificate is cancelled or suspended it must be forwarded to the Board of Trade with the report.

The Board of Trade may, if they deem it just, re-issue and return any certificate, or shorten the time of suspension, or grant a new certificate of the same or of a lower grade.

No certificate can be cancelled or suspended under these provisions, unless a copy of the report, or a statement of the case upon which the investigation has been ordered has been furnished, before its commencement, to the owner of the certificate; nor, can a certificate be cancelled or suspended in cases of investigation conducted by justices or a stipendiary magistrate, unless one assessor, at least, concurs in the report.

Every master or mate, whose certificate is suspended or cancelled, must, upon the demand of the board, court, or tribunal, deliver up his certificate to them, or deliver it (if there has been no such demand) to the Board of Trade on its demand (*p*).

The Merchant Shipping Act Amendment Act, 1862, provides that steam-ships, which are required to have on board certificated masters, shall also carry certificated engineers; and this statute provides for the examination of such engineers and the granting of certificates to them (*q*).

Under these statutes the Board of Trade has issued regulations with reference to the examination of masters and mates, and engineers; and masters and mates who are entitled to, or who hold certificates of competency, may, if they choose, undergo a voluntary examination as to their practical knowledge of the use and working of the steam-engine, and obtain in this respect a "steam certificate."

(*p*) M. S. A. Amendment Act, 1862,
s. 23.

(*q*) 25 & 26 Vict. c. 63, ss. 5—12.
See also *post*, Chap. IV., CREW.

Secondly, as to the *appointment and remuneration of the master*. It often occurs that the master is also a part owner of the ship he commands, in which case his appointment is a matter of agreement between himself and the other owners (r). Where this is not so, the right of appointing him is vested in the owner, or, if there be more than one owner, in the majority, in proportion, not to their number, but to the amount of their interest in the ship (s). Cases may, however, arise in which it may become necessary, for the prosecution of the voyage, to appoint a master, although no communication can be had with the owners. In one instance where, as a measure of necessity, the consignees of a cargo appointed a master in the stead of one who had deserted at a foreign port, the Court of Admiralty said, that it would feel strongly inclined to hold him entitled to the privileges, and competent to discharge the functions of a master appointed in the most regular manner (t). And more recently the same Court upheld the appointment of a master made by a British consul at a foreign port, to which the ship had come after the master and crew had been murdered in a mutiny (u).

The right to remove the master is, in ordinary cases, vested in the persons who have the right of appointment. It is provided, however, by the Merchant Shipping Act, 1854, that any Court of Admiralty may, upon the application of the owner of any ship within its jurisdiction, or on that of his agent or of a part owner or consignee, or of a certificated mate, or of one third or more of the crew, remove the master of the ship, if it be proved on oath to the satisfaction of the Court that the removal is necessary (v). In these cases the Court may, with the consent of the owner, agent or consignee (or without their consent if they are not within the jurisdiction), appoint a new master (x).

By the same statute, any naval court held on the high seas or

(r) When this is the case, it is necessary carefully to observe in which of his two characters he does any particular act. See *ante*, Chap. II., OWNER.

(s) Molloy, B. 2, c. 1, s. 4.

(t) See the judgment of Sir W. Scott in *The Alexander*, 1 Dods. 281.

(u) *The Cynthia*, 16 Jur. 748. See also *The Eliza Cornish*, 17 Jur. 738; S. C. 1 Eccl. & Adm. 36.

(v) M. S. Act, 1854, s. 240. An attempt to defraud constitutes a sufficient

necessity for removal to induce the Court to act under this section, which is not limited to the class of persons enumerated in sect. 239. *The Royalist*, 32 L. J., P. M. & A. 105.

(x) M. S. Act, 1854, s. 240. By sect. 241, the Board of Trade, or any local marine board, is empowered to institute an investigation in any case in which they have reason to believe that any master or mate is from incompetency or misconduct unfit to discharge his duties.

abroad may, if unanimous that the safety of the ship or crew or the interest of the owner absolutely requires it, supersede the master and appoint another in his stead. The consent, however, of the consignee of the ship, if he be at the place where the enquiry takes place, must be obtained to the appointment of the new master (*y*).

The principal source of remuneration to the master for his services is the salary which he receives from the owner. As the consideration for this salary is his performing his duty, if he be guilty of any gross misconduct, as barratry or drunkenness (*z*), or exhibit gross incapacity, an entire forfeiture of his wages will ensue. In the Admiralty Court, if any loss has been sustained by his negligence without such extreme misconduct or incapacity, it is usual to deduct from his pay the amount of the loss alone. In considering what acts of the master will work a total forfeiture of his wages, it has been said that nothing more can be required from him than the honest exercise of his own discretion, according to the degree of ability and experience in business which such an officer may fairly be supposed to possess, and that a mere error of judgment on his part, not tainted with any guilty intention or corrupt motive, will not have this effect (*a*).

The refusal by the master to deliver goods, under a claim to stop *in transitu*, is a breach of duty which gives to the Court of Admiralty jurisdiction under the Admiralty Court Act, 1861 (*b*).

The old rule, that freight is the mother of wages, did not extend to the salary of the master (*c*).

Primage.

The master is usually entitled, in addition to the pay which he may stipulate to receive from those who employ him, to *primage*, which is mentioned in the bills of lading thus, "with primage and average accustomed" (*d*). This is a small payment made by the owner or consignee of the goods to the master for his care and trouble, which varies in amount according to

(*y*) M. S. Act, 1854, s. 263. As to the constitution of these naval courts, see *post*, Chapter IV., CREW.

(*z*) *The Atlantic*, 11 W. R. 188.

(*a*) See the judgment of Dr. Lushington in *The Thomas Worthington*, 3 W. Rob. 128, and *post*, Chap. IV., CREW.

(*b*) See the 24 Vict. c. 10, s. 6; and *The Tigress*, 32 L. J., P. M. & A. 97.

(*c*) *Hawkins v. Twizell*, 5 E. & B. 883, and see *post*, p. 92, note (*a*).

(*d*) The older books speak also of *average* as a payment to the master.

the particular trade in which the ship is engaged. The master may himself sue the consignee for it, although the freight has been settled with the shipowner (e). Where by the bill of lading goods were to be delivered to the consignee, "he paying freight for the same as per charter-party, with primage and average accustomed," and the agreement between the shipowner and consignee (there being no actual charter-party) was for so much per ton, not mentioning primage, it was held that the master was entitled to primage from the consignee, although his bargain with the owner was to receive beyond his wages a sum certain "for all cabin or other allowances" (f).

The law considers, however, on obvious grounds of policy, that the master is engaged to devote the whole of his time and attention to the concerns of his owner, and it, therefore, does not allow him to trade on his own account (g), or to hire out his services, or any part of them, to another. Should he do so, he is not entitled to receive any earnings derived from such a contract, and if they have been paid to the owner, the latter is entitled to retain them (h). For the same reason the master may not claim premiums for himself which arise out of transactions in which he is engaged on behalf of his employers, even although a contrary usage may have prevailed in this respect (i).

Trading on his own account.

The master could not, until recently, except in the case of the bankruptcy or insolvency of the owner (when by the 7 & 8 Vict. c. 112, s. 16, he had the same rights, liens and remedies as the other mariners) (j), sue in the Admiralty Court for his wages,

Remedy for wages.

(e) *Best v. Saunders*, M. & M. 268.

(f) *Ib.*; see also *Charleton v. Cotesworth*, R. & Moo. 175, and *post*, Chap. VI., CONTRACT OF AFFREIGHTMENT.

(g) *Gardner v. McCutcheon*, 4 Beav. 534.

(h) *Thompson v. Havelock*, 1 Camp. 527.

(i) *Diplock v. Blackburn*, 3 Camp. 43.

(j) See *post*, Chap. IV., CREW. This statute is now repealed. It was held in the Admiralty Court, that to entitle a master to sue there for his wages under it, the owner must have been insolvent in the legal sense of the word, and not merely under a general inability to pay

his debts. *The Princess Royal*, 2 W. Rob. 373. Where an owner had committed an act of bankruptcy by filing a declaration of insolvency, and two months had expired, but no commission had issued, this was held not to be a case of bankruptcy under the statute so as to entitle the master to sue. *The Great Northern*, 2 W. Rob. 509; see also *The Tecumseh*, 3 ib. 109. It was also considered doubtful whether the statute applied where some only of several part owners were bankrupt. See *The Simlah*, 15 Jur. 865, and the 7 & 8 Vict. c. 112, s. 63, (the interpretation clause.)

for his contract was considered to be personal with the owners, and founded on their credit alone, and not on that of the ship (*k*). Now, however, it is provided by sect. 191 of the Merchant Shipping Act, 1854, that every master shall have the same rights, liens and remedies, for the recovery of his wages, as any seaman, not being a master; and if in any proceeding in any Admiralty or Vice-Admiralty Court (*l*), touching the claim of a master to wages, any set-off or counter-claim is set up, the Court may adjudicate upon and settle all questions and accounts arising and unsettled between the parties, and direct the payment of any balance found due. And by the Admiralty Court Act, 1861, jurisdiction is given to that Court over any claim made by a master for wages earned by him on board the ship, and for disbursements (*m*) made by him on account of the ship (*n*). The claim of the master for wages has priority over that of a bottomry bond owner, except where the master has bound himself in the bond to pay the money advanced. The seamen's claim for wages takes, however, precedence of the master's claim, either for his own wages or for advance of wages made to the seamen (*o*).

The remedy given by s. 191 of the Merchant Shipping Act, 1854, has been held to apply to the master of a foreign ship (*p*).

The ordinary remedies of the master or mate may, it is obvious, be affected by their conduct in any particular case. Thus, where a mate, having the option at a foreign port to receive his wages in money, or by a bill upon the owners, preferred the

(*k*) *Bayly v. Grant*, 1 Salk. 33; per Sir W. Scott, in *The Lord Hobart*, 2 Dods. 104; *Barber v. Wharton*, 2 Ld. Raym. 1452. If, however, the mate became master during the voyage, he might sue in the Court of Admiralty for wages due to him as mate during the whole time, but not as master for the time during which he served in that capacity. See *The Favourite*, 2 Rob. 232; *Read v. Chapman*, 2 Str. 937; and Lord Stowell's judgment in *The Batavia*, 2 Dods. 500. The master must bring his claim for the whole amount of wages due, and cannot, in the first instance, go into any account relating to other matters between himself and the owners. The owners may, however, go into the whole account. *The Caledonian*, 1 Swab. A. R. 17.

(*l*) As to the establishment and juris-

diction of Vice-Admiralty Courts in the Colonies, see the "Vice-Admiralty Courts Act, 1863," (26 Vict. c. 24.)

(*m*) This word does not include the master's liability for wages due to the crew or necessaries furnished to the ship. *The Chieftain*, 32 L. J., P. M. & A. 106.

(*n*) 24 Vict. c. 10, s. 10. This section provides that "if in any such cause the plaintiff do not recover fifty pounds, he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court." See as to costs, when the claim is referred to the registrar and merchants and reduced, *The Lemuella*, 1 Lush. A. R. 147.

(*o*) *The Salacia*, 1 Lush. A. R. 545.

(*p*) *The Milford*, 1 Swabey, A. R. 362.

latter, it was held that he had lost all claim against the ship (*q*). Where, however, a master had several times balanced accounts with the owner, which included disbursements and wages, and had received bills for the joint amounts, it was held, that upon the owner becoming bankrupt, the bills being unpaid, the master had still his remedy under the 7 & 8 Vict. c. 112 (*r*).

It has been held in the Court of Admiralty, that the wages of the master are not forfeited by occasional drunkenness, or by an error in judgment, although it is otherwise where the drunkenness is constant (*s*). Forfeiture of,
by misconduct.

The master had at common law no lien on the ship (*t*), or Lien. freight (*u*), for his wages, or for disbursements on account of the ship during the voyage. We have seen, however, that under the Merchant Shipping Act, 1854, he has now the same liens and remedies for his wages as the seamen have; and the seamen have, independently of statute, a lien upon the ship and freight for their wages, which lien is enforceable in the Court of Admiralty (*v*). The master has accordingly in that Court a maritime lien for his wages (*x*). Where by a charter-party (not under seal), made by the master, the charterer agreed to pay freight generally, without saying to whom, it was held that the owner having received the freight, the master could not maintain an action for it against the charterer, although he had given him notice not to pay it to any one but himself (*y*).

Where a master entered into charter-parties abroad, and paid monies and incurred liabilities in fitting his ship to perform them, and on her arrival in England the owner was bankrupt, having mortgaged the ship, and the mortgagees seized her, it was held, on a bill filed by the master against the owner's assignees in bankruptcy, that he had an equitable lien on the freight, and was entitled to be reimbursed out of it (*z*).

The master may not only insure his commission and privileges, or any other interest which he may have in the ship or voyage,

- (*q*) *The William Money*, 2 Hagg. 136. ington in *The Ella Clarke*, 32 L. J., P. M. & A. 211.
 (*r*) *The Simlah*, 15 Jur. 865. & A. 211.
 (*s*) *The Atlantic*, 11 W. R. 188. (*y*) *Atkinson v. Cotesworth*, 3 B. & C. 647.
 (*t*) *Wilkins v. Carmichael*, 1 Doug. 101; *Hussey v. Christie*, 9 East, 426.
 (*u*) *Smith v. Plummer*, 1 B. & A. 575.
 (*v*) See *post*, Chap. IV., CREW.
 (*z*) See the judgment of Dr. Lush-

but, unlike the other mariners, he might (even before the alteration in the law by which the right of the seamen to wages is made no longer to depend on the earning of freight) insure his wages; since the objections in the former case did not apply to that of the master, who was always entitled to his wages, although the ship was lost or captured (*a*).

AUTHORITY.

Thirdly, as to *the authority of the master over his crew or others on board*. Whilst his vessel is afloat, the master is bound to maintain order and discipline on board, under the guidance of justice, moderation and good sense. His authority over his crew has been compared to that of a parent over his child, or of a master over his apprentice; these analogies, however, are not very close, and the safer rule is to consider the particular authority which the respective positions of the parties require (*b*). A master may order a delinquent mariner to be confined, or inflict corporal punishment upon him (*c*), and this authority exists not only whilst the ship is at sea, but also whilst she is in a foreign port or river (*d*). Such punishment or confinement must, however, be commensurate to the offence committed, and must be awarded with due moderation (*e*). The master is not bound to wait for an actual act of mutiny, but may use violence to prevent it although it be only threatened (*f*). In all cases which admit of the delay, due inquiry should precede the punishment, and the party charged should be heard in his own defence (*g*). It is the duty and also the interest of the master to cause a statement of the offence, and of any punishment which may be inflicted, to be entered in the official log (*h*). The position of

(*a*) *King v. Glover*, 2 N. R. 206; *Webster v. De Tastet*, 7 T. R. 157; *Hawkins v. Twizell*, 5 E. & B. 883.

(*b*) The English authorities on this subject are few. They are collected in Pritchard's Adm. Digest, tit. DAMAGE, PERSONAL. For the American cases see *ibid.*, also a valuable note to the 5th American edition of Abbott on Shipping, p. 234, and the authorities there cited.

(*c*) Molloy, B. 2, c. 3, s. 12. *The Agincourt*, 1 Hagg. 271.

(*d*) *Lamb v. Burnett*, 1 C. & J. 291. The American Courts have laid down the very reasonable rule, that where it appears that the punishment is merited, they will not undertake to adjust exactly,

according to their own ideas of fitness and propriety, the balance between the offence and the punishment, and that they will not award damages unless the punishment is manifestly excessive. See the cases cited in the 5th American edition of Abbott on Shipping, 236.

(*e*) *Per* Lord Stowell, in *The Lowther Castle*, 1 Hagg. 385; *Murray v. Moutrie*, 6 C. & P. 471.

(*f*) *The Lima*, 3 Hagg. 346; and see *Bingham v. Garnault*, Buller, N. P. 17.

(*g*) See *per* Lord Stowell, in *The Agincourt*, 1 Hagg. 274.

(*h*) M. S. Act, 1854, s. 244. See an account of the log, *post*, p. 101, and the remarks of Tindal, C. J., in *Murray v. Moutrie*, *ubi sup.*

passengers is different; but even over them the master has absolute control in all that is necessary for the safe and proper conduct of the vessel, but the exercise of such power in each instance is defined and limited by the necessity of the case. He may restrain them by force, if the safety of the ship or of those on board requires it (*i*); he may also, it would seem, exclude them from the table where the other passengers mess, if their conduct be improper (*k*). If the master exceeds the bounds of justice and moderation, he becomes a trespasser, and in cases of assault committed by him whilst at sea, either on one of his crew or on a passenger, the Court of Admiralty has jurisdiction, and may award damages to the injured party (*l*). He is also liable to be sued in a Court of Common Law (*m*).

Fourthly, as to *the duties of the master*, we will consider them as they arise before the voyage, during the voyage, and after the voyage has been determined. DUTIES BEFORE THE VOYAGE.

Before the commencement of the voyage the duty of the master, as regards the state of the ship, is identical with that of the owner (*n*). There are, however, other duties which fall more immediately within his province; thus he must procure a competent crew, both as regards number and fitness for their respective duties; he must also conform to any requirements of the Legislature as regards their engagement (*o*); and on leaving port he must, in the case of foreign going ships, sign and send to the nearest shipping master a statement, in a form sanctioned by the Board of Trade, of every change which takes place in his crew before finally sailing (*p*). By the General Harbour Act, 10 & 11 Vict. c. 27, s. 53, masters, whilst their vessels are within any harbour or dock, or within the limits of any harbour-master's authority, must regulate their vessels in accordance with that act, or any special act by which the harbour is governed; and if, after due notice, they neglect to do so, they are liable to penalties not exceeding 20*l*. (*q*). As to ship and crew.

(*i*) See the judgment of Lord Ellenborough in *Boyce v. Bayliffe*, 1 Camp. 60, and *King v. Franklin*, Fost. & F. N. P. Rep. 360, and *post*, Chap. XI., PASSENGERS.

(*k*) *Prendergast v. Compton*, 8 C. & P. 464. See as to the enforcement by the master of sanitary regulations in passenger ships, *post*, Chap. XI., PASSENGERS.

(*l*) *The Enchantress*, 1 Hagg. 395;

The Centurion, *ib.* 161; *The Ruckers*, 4 Rob. 73.

(*m*) *Watson v. Christie*, 2 B. & P. 224; *Aitken v. Bedwell*, M. & M. 68; *Rhodes v. Leach*, 2 Stark. 516; *Hannafoord v. Hunn*, 2 C. & P. 148.

(*n*) *Ante*, p. 46.

(*o*) See *post*, Chap. IV., CREW.

(*p*) M. S. Act, 1854, s. 158.

(*q*) The provisions of the 10 & 11 Vict. c. 27, which relate to the mode in

The ship being properly fitted and manned, the master must, with due diligence, take her to the place where she is to receive cargo, since if he be guilty of any deviation so long and unreasonable as to put an end to the whole object which the freighter had in view, or if he incur unreasonable delay in the commencement of the voyage, the latter may be discharged, the shipowner will be liable to an action, and the insurances will be avoided. In all contracts by charter-party, where there is no express agreement as to time, it is an implied stipulation that there shall be no unreasonable or unusual delay in commencing the voyage. All the authorities concur in stating that the voyage must be commenced within a reasonable time (*r*). Before commencing the voyage he must obtain all necessary Custom House documents; he must also produce to the shipping master his certificate of competency or service, and obtain from him a certificate of his having complied with this provision and with the regulations of the Merchant Shipping Act, 1854, with respect to agreements, which last-mentioned certificate must be produced to the officers of Customs before a clearance can be obtained (*s*).

Customs laws.

It would be beyond the scope of this work to pursue minutely the various requirements of the acts regulating the Customs which impose duties on the master; the following remarks, however, may be found to be useful. The regulations at present in force relating to the customs are contained in the Consolidation Act, 16 & 17 Vict. c. 107, as amended by the 18 & 19 Vict. c. 96, the 19 & 20 Vict. c. 75, the 20 & 21 Vict. cc. 61,

which vessels must enter harbours, and how they must lie and be moored therein, and in what manner they must discharge cargo, are contained in sects. 53—68.

(*r*) See *per Tindal, C. J.*, in *M'Andrew v. Adams*, 1 Bing. N. C. 29. See also *Freeman v. Taylor*, 8 Bing. 124; *Mount v. Larkins*, *ib.* 108; *Benson v. Blunt*, 1 Q. B. 870; *Cliphsham v. Vertue*, 5 Q. B. 265; and *Phillips v. Irving*, 7 M. & G. 335. In *Tarrabochia v. Hickie*, 1 H. & N. 183, the Court of Exchequer was of opinion that the sailing with convenient speed, or in a reasonable time, was not a condition precedent to the charterer's liability to find a cargo. Where, however, a charter-party contains a stipulation that a ship shall sail on a particular

day, time is ordinarily of the essence of the contract, and this is a condition precedent. *Seeger v. Duthie*, 8 C. B., N. S. 46. See also *Behn v. Burness*, in the Exchequer Chamber, 32 L. J., Q. B. 204, and the cases cited *post*, Chap. VI., Part I., CONTRACT OF AFFREIGHTMENT.

(*s*) M. S. Act, 1854, ss. 161, 162. In the case of home trade ships, the certificates of competency and service must be produced to the shipping masters half-yearly. Every agreement with the crew, made for a home trade ship, must also be half-yearly transmitted to a shipping master in the United Kingdom, who is bound thereupon to give a certificate to the master or owner, without which no home trade ship can go to sea. *ib.*

62, the 21 & 22 Vict. cc. 12, 16, the 22 & 23 Vict. c. 37, the 23 Vict. c. 22, the 23 & 24 Vict. c. 110, and the 25 & 26 Vict. c. 63 (*t*). The clauses of the first of these acts, which relate to "*Exportation*," and "*Entry and Clearance Outwards*," contain the following provisions (*u*).

The master must, before any goods are shipped for exportation, deliver to the collector or comptroller a certificate from the proper officer of the ship's clearance inwards, or coastwise, on her last voyage. He must also deliver an entry outwards, signed by himself, of the ship for her intended voyage, which must be in the form and contain the particulars prescribed by the Customs Act; and if she has commenced her lading at some other port, he must deliver to the searcher the clearance of such goods from such other port. This is the entry outwards of the ship; and if any goods are taken on board before she is entered outwards the master forfeits 100*l*. Where, however, it is necessary to load heavy goods before the whole of the inward cargo is discharged, the collector may issue a licence, called a stiffening order, for that purpose (*x*).

No goods may be shipped in any port or place in the United Kingdom, for exportation, before the due entry outwards of the ship and the due entry of the goods, nor before they have been cleared for shipment (*y*). The exporter or his agent must, also, before the goods are shipped, deliver to the officer of Customs shipping bills, containing the particulars of the goods, in a form given by the act, which bills, when countersigned by the officer, are the clearance for the goods, and answer the same purpose as the cockets required before the passing of this statute (*z*).

No stores may be taken on board any ship of the burthen of fifty tons or upwards, on a voyage to parts beyond the seas, the duration of which out and home is not less than forty days, without a victualling bill, which is an account of the stores shipped on board, signed by the master or his agent and coun-

(*t*) For a list of the old acts, see the 6 Geo. 4, c. 105, and the 8 & 9 Vict. c. 84, by which they were repealed.

(*u*) Sailing without clearing documents, contrary to 16 & 17 Vict. c. 107, ss. 170—172, does not render the voyage absolutely illegal; and a person not a party to the master's acts can recover on a policy of insurance effected on the cargo and freight. *Cunard v. Hyde*, 1 E. B. & E. 670. As to when the Customs bill of lading is to be deemed the

entry outwards, see 23 Vict. c. 22, s. 21; and as to the particulars required, see *ib.* ss. 21—29. As to when and on what conditions an agent may act for the master, see 23 & 24 Vict. c. 110, s. 6.

(*x*) 16 & 17 Vict. c. 107, s. 118.

(*y*) *Id.* s. 119. See s. 120, as to the bond which must be given by the exporter of the goods as the export entry.

(*z*) 16 & 17 Vict. c. 107, ss. 121—126. The cocket was a document cer-

tersigned by the officer of Customs. For this purpose an order for the shipment of the stores must have been duly obtained on a proper application to the officers of Customs (*a*).

Before any ship can be cleared outwards, the master must also sign and deliver a content of his ship to the searcher, setting forth among other things her name and tonnage, the name of the master, and a description of the goods; and he must answer such questions as are demanded of him by the collector or comptroller concerning the ship, cargo and intended voyage (*b*).

When this has been done the searcher clears the goods; and if any goods are shipped without a compliance with the provisions of the act they are liable to be forfeited (*c*). If the ship leaves in ballast, the master must answer all such questions as are asked of him by the collector, touching the departure and destination of the ship; and thereupon the collector clears the ship in ballast, and notifies the clearance on the victualling bill (*d*).

The Customs Tariff Amendment Act, 1860 (23 Vict. c. 22) also imposes upon the master duties with reference to the export of goods under the statute. The master or owner must within six days of the final clearance outwards of any ship in which goods are shipped for exportation, deliver to the proper officer of Customs a manifest, containing an account of all the goods shipped for exportation, and submit a declaration that this account is true, under a penalty. If, however, the whole of the bills of lading relating to the goods exported in the ship, and duly signed by the master or his agent, are delivered to the proper officer of Customs, either at the time, or within twenty-four hours after the final clearance outwards of the ship, with a declaration that they represent, to the best of his knowledge and belief, the whole of the cargo exported, the manifest may be dispensed with. A specification of the goods exported is also required in certain cases by this act (*e*).

The master should in no case carry any fictitious or colorable papers; neither should he take on board prohibited or unlawful

tifying that the Customs dues on the goods described on it had been paid or secured. See 2 Beawes, *Lex Merc.* 425; *Termes de la Ley* "Cockett."

(*a*) 16 & 17 Vict. c. 107, s. 140.

(*b*) *Ib.* s. 142.

(*c*) *Ib.* s. 144.

(*d*) *Ib.* s. 145.

(*e*) 23 Vict. c. 22, ss. 21—26.

goods, whereby the cargo may be made liable to seizure, or the policies of insurance may be rendered void (*f*).

The master must also pay all port, light or other dues, payable in harbour or in rivers. He is, in general, personally liable for them (*g*); and, where there is a custom to that effect, it would seem that the anchor and sails may be distrained for port dues (*h*). Port dues.

The necessary Custom House documents having been obtained, the next duty which devolves upon the master is to load and stow the cargo entrusted to him; he must be prepared with the necessary tackle for shipping, and with dunnage (*i*), or other requisites for properly stowing it on board; and if any goods are injured by his or his agent's negligence whilst they are being shipped, he is liable (*k*). It sometimes occurs that an agent specially appointed by the owner, called a *stevadore* (*l*), is employed to load the cargo, in which case the master is ordinarily discharged from responsibility, unless he personally interferes (*m*). Lading cargo.

Where by the terms of the charter-party the *stevadore* was to be appointed by the charterer, but to be paid by and to act under the orders of the captain, it was held, that the master was not liable for the negligence of the *stevadore* and his men, this control by the captain being given only with a view to the safety and trim of the ship (*n*).

And where a charter-party contained a provision, that the charterers should be at liberty to employ *stevadores* and labourers to assist in loading cargo, but that such *stevadores* and labourers being under the control and direction of the master, the charterers were not to be responsible to the owners for

(*f*) Molloy, B. 2, c. 2, ss. 7, 9. See post, Chap. VII., INSURANCE.

(*g*) Molloy, B. 2, c. 2, s. 9; *Mayor of London v. Hunt*, 3 Lev. 37; *Vinkerstone v. Ebdon*, 1 Salk. 248. See, as to the meaning of the word "owner" in a charter granting dues payable by owners, *The Master Pilots of Newcastle v. Hammond*, 4 Exch. 285. See also *The Ribble Navigation Company v. Hargreaves*, 17 C. B. 385, where a somewhat similar question arose under a local statute.

(*h*) *Vinkerstone v. Ebdon*, 1 Salk. 248.

(*i*) 1 Beawes, Lex Merc. 163. *Dunnage* consists of loose wood or other

matters placed on the bottom of the hold above the ballast to stow cargo upon. Dana's Seaman's Manual, p. 94.

(*k*) Laws of Oleron, art. 10; *Goff v. Clinkard*, cited in *Dale v. Hall*, 1 Wils. 282.

(*l*) In the Consolato he is called "*Stibador*," and in modern Spanish "*Estibador*," from "*Estivar*," to stow.

(*m*) *Swanston v. Garrick*, 2 L. J., Exch. 255.

(*n*) *Blakie v. Stembridge*, 6 C. B., N. S. 894; affirmed Cam. Scacc., *ib.* 911. See also *Pardessus*, Coll. des Lois Marit. vol. 2, p. 220.

pilotage under the jurisdiction of the Trinity House (the area of which extends over all the more important districts), that foreign ships are within these enactments of the Merchant Shipping Act, 1854 (*c*). And it has been held, in the Court of Admiralty, that a statute imposing upon all inward bound vessels, in general terms, an obligation to take a pilot at a station beyond three miles from the British shore, is binding upon foreign ships (*d*).

REMUNERA-
TION OF PI-
LOTS.

A pilot, when seeking compensation for his services, may, where no statute has intervened, be considered in most respects as an ordinary mariner; he cannot, however, sue in the Admiralty Court for pilotage due in respect of work done within the body of a county, although he may if it was done on the high seas (*e*). Questions as to the amount of remuneration which pilots are entitled to receive have seldom arisen in this country, for the amount of these payments has been usually fixed by the statute or charter under which the pilots have acted (*f*).

By the Merchant Shipping Act, 1854, sect. 358, a qualified pilot demanding or receiving, or a master offering or paying to a pilot, any other rate in respect of pilotage services (whether greater or less) than the rate for the time being demandable by law, incurs for each offence a penalty not exceeding 10*l*. This restriction, however, applies only to licensed pilots acting under ordinary circumstances. Therefore, where, in the absence of a duly qualified pilot, one who has no licence is taken on board, he may demand more than the amount

(*c*) See *post*, p. 219, and the M. S. Act, 1854, ss. 376—384. Foreign ships, within British jurisdiction, are now subject to the statutory regulations in force for preventing collisions. M. S. A. Amendment Act, 1862, s. 57. Before the passing of this act it was held, in the Privy Council, that the provisions of ss. 296—298 of the M. S. Act, 1854, as to navigation and lights, did not apply to a foreign ship navigating the Solent within three miles of the British coast. See *The Saxonia*, 1 Lush. A. R. 410, and *post*, Chap. IX., COLLISION.

(*d*) *The Annapolis*, 1 Lush. A. R. 295.

(*e*) *Ross v. Walker*, 2 Wilson, 264, and the remarks of Mr. Justice Story,

in *The Anne*, 1 Mason (American) Rep. 509, and in *Hobart v. Drogan*, 10 Peters (American) Rep. 119. This rule appears to be still in force. For the jurisdiction of the Court of Admiralty, where not extended by statute, is founded, in cases of this description, on *marine* service. See the judgment of Lord Mansfield in *Howe v. Nappier*, 4 Burr. 1950. The Colonial Vice-Admiralty Courts established under the "Vice-Admiralty Courts Act, 1863" (26 Vict. c. 24), have jurisdiction over claims in respect of pilotage. See s. 10 of this act.

(*f*) See *ante*, p. 198.

allowed by the statute (*g*). It is also a settled doctrine of the Admiralty Court, that a pilot is not bound to go on board a vessel in distress to render pilot service for mere pilotage reward (*h*); for the duties of pilotage extend usually only to the conducting a vessel into or out of port in the ordinary course of navigation, and the scale of remuneration given by the statute has been founded on this assumption; therefore, where a vessel, from real or supposed danger, is seeking a port of safety out of the course of her intended voyage, a pilot, if engaged, is entitled to additional remuneration in the nature of salvage (*i*).

The scale of payment to the Trinity House and to the Cinque Port Pilots, who are also now under the jurisdiction of the Trinity House, is contained in one of the schedules to the Merchant Shipping Act, 1854 (*j*).

By the Merchant Shipping Act, 1854, sect. 356, if a boat or ship, having a qualified pilot on board, leads a ship which has not a qualified pilot, when the latter ship cannot from particular circumstances be boarded, the pilot so leading is entitled to the full pilotage for the distance run as if he had actually been on board and had charge of her.

RIGHTS AND
PRIVILEGES
OF PILOTS.

By sect. 357, no pilot, except under circumstances of unavoidable necessity, may without his consent be taken to sea or beyond the limits for which he is licensed; a pilot so taken under circumstances of unavoidable necessity, or without his consent, is entitled, over and above his pilotage, to the sum of ten shillings and six pence a day, to be computed from and inclusive of the day on which the ship passes the limit to which he was engaged to pilot her up to and inclusive of the day of his being returned in the ship to the place where he was taken on board, or up to and inclusive of such day as will allow him, if discharged from the ship, sufficient time to return thereto; and in the last-mentioned case he is entitled to his reasonable travelling expenses.

By sect. 359, if a master, on being requested by a qualified pilot having the charge of his ship to declare her draught of

(*g*) *The Nelson*, 6 Rob. 227. A decision under the earlier statutes.

(*h*) *Per* Dr. Lushington, in *The Frederick*, 1 W. Rob. 17.

(*i*) *The Elizabeth*, 8 Jur. 365. See also the judgment of Sir W. Scott, in

The Joseph Harvey, 1 Rob. 308.

(*j*) See *post*, Appendix, pp. clxiv, clxv. The Trinity House has also jurisdiction over certain Out Port districts, the fees within which are not fixed by any statute.

water, refuses to do so, or makes himself, or is privy to any other person making, a false declaration to the pilot as to her draught, he incurs a penalty not exceeding double the amount of pilotage which would have been payable; and if a master or other person interested in a ship makes or is privy to any other person making a fraudulent alteration in the marks on the stern or stem post of his ship denoting her draught of water, the offender incurs a penalty not exceeding 500*l*.

By sect. 360, a qualified pilot may supersede an unqualified pilot, but the master must pay to the unqualified pilot a proportionate sum for his services, and may deduct the same from the charge of the qualified pilot; and in case of dispute the pilotage authority by which the qualified pilot is licensed is to determine the proportionate sums to which each party is entitled.

By sect. 361, an unqualified pilot assuming or continuing in the charge of a ship after a qualified pilot has offered to take charge of her, or using a licence which he is not entitled to use for the purpose of making himself appear to be a qualified pilot, incurs a penalty not exceeding 50*l*.

By sect. 362, an unqualified pilot may, within any pilotage district, without subjecting himself or his employer to any penalty, take charge of a ship as pilot under the following circumstances; (that is to say,)

When no qualified pilot has offered to take charge of the ship, or made a signal for that purpose; or

When a ship is in distress or under circumstances making it necessary for the master to avail himself of the best assistance which can be found at the time; or

For the purpose of changing the moorings of any ship in port, or of taking her into or out of any dock, in cases where the act can be done by an unqualified pilot without infringing the regulations of the port or any orders which the harbour master is legally empowered to give.

By sect. 363, the following persons are liable to pay pilotage dues for any ship for which the services of a qualified pilot are obtained: the owner or master, or any consignees or agents who have paid or made themselves liable to pay any other charge on account of the ship in the port of her arrival or discharge, as to pilotage inwards, and in the port from which she clears out as to pilotage outwards; and in default of pay-

ment the pilotage dues may be recovered in the same manner as penalties of the like amount imposed by the act; but this recovery may not take place until the dues have remained unpaid for seven days after a demand has been made in writing.

By sect. 364, every consignee and agent (not being the owner or master) who is made liable by the act for the payment of pilotage dues may retain, out of any monies in his hands, received on account of the ship or belonging to her owner, the amount of all dues so paid, together with any reasonable expenses incurred by reason of the payment or liability.

By the Merchant Shipping Act, 1854, sect. 365, if any qualified pilot commits any of the following offences; (that is to say,) OFFENCES OF
PILOTS.

- (1.) Keeps himself, or is interested in keeping by any agent, servant, or other person, any public-house, or place of public entertainment, or sells or is interested in selling any wine, spirituous liquors, tobacco, or tea :
- (2.) Commits any fraud or other offence against the revenues of Customs or Excise, or the laws relating thereto :
- (3.) Is in any way, directly or indirectly, concerned in any corrupt practices relating to ships, their tackle, furniture, cargoes, crews, or passengers, or to persons in distress at sea or by shipwreck, or to their monies, goods or chattels :
- (4.) Lends his licence :
- (5.) Acts as pilot whilst suspended :
- (6.) Acts as pilot when in a state of intoxication :
- (7.) Employs or causes to be employed on board any ship of which he has the charge, any boat, anchor, cable, or other store, matter, or thing beyond what is necessary for the service of the ship, with the intent to enhance the expenses of pilotage for his own gain or for the gain of any other person :
- (8.) Refuses or wilfully delays, when not prevented by illness or other reasonable cause, to take charge of any ship within the limits of his licence upon the signal for a pilot being made, or upon being required to do so by the master, owner, agent, or consignee, or by any officer of the pilotage authority by whom the pilot is licensed, or by any principal officer of Customs :

- (9.) Unnecessarily cuts or slips or causes to be cut or slipped any cable belonging to any ship :
- (10.) Refuses, on the request of the master, to conduct the ship of which he has the charge into any port or place into which he is qualified to conduct her, except on reasonable ground of danger to the ship :
- (11.) Quits the ship of which he has the charge, without the consent of the master, before the service for which he was hired has been performed :

For each such offence, in addition to any liability for damages at the suit of the person aggrieved, he incurs a penalty not exceeding 100*l.*, and is liable to suspension or dismissal by the pilotage authority by which he is licensed ; and every person who procures, abets, or connives at the commission of any of these offences incurs, in addition to this liability for damages, a penalty not exceeding 100*l.*, and, if a qualified pilot, is liable to suspension or dismissal by the pilotage authority by which he is licensed.

By sect. 366, if a pilot, when in charge of any ship, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of the ship, or tending immediately to endanger the life or limb of any person on board, or if any pilot, by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done for preserving the ship from loss, destruction, or serious damage, or for preserving any person belonging to or on board of her from danger to life or limb, the pilot so offending is guilty of a misdemeanor, and, if a qualified pilot, is liable to suspension and dismissal by the authority by which he is licensed.

By sect. 367, if any person, by wilful misrepresentation of circumstances upon which the safety of a ship may depend, obtains or endeavours to obtain the charge of her, he, and every other person procuring, abetting, or conniving at the commission of the offence, incurs a penalty not exceeding 100*l.*, in addition to any liability for damages at the suit of the party aggrieved. If the offender is a qualified pilot, he is also liable to suspension or dismissal by the pilotage authority which licensed him.

We shall see in a later portion of this Chapter that the pilots under the jurisdiction of the Trinity House are obliged to give

a bond for 100*l.*, conditioned for the due observance of the regulations and bye-laws of that corporation, and that qualified pilots, having executed this bond, are not liable for mere neglect or want of skill beyond the amount of the penalty and of the pilotage payable in respect of the voyage on which they are engaged (*i*).

The general powers and jurisdiction of the Trinity House are regulated by Part V. of the Merchant Shipping Act, 1854, sects. 368 to 386 (*j*). We have already seen that by sect. 331 of that act all pilotage authorities retain their then existing powers and jurisdiction so far as they are consistent with the provisions of the statute.

TRINITY
HOUSE PI-
LOTAGE.

By the Merchant Shipping Act, 1854, sect. 368, it is provided that the Trinity House may alter any of the provisions in the statute contained (and expressed to be subject to alteration by them), in the same manner and to the same extent as they might have altered the same if contained in any previous statute (*k*).

Powers of Tri-
nity House.

(*i*) See *post*, p. 220.

(*j*) Before the 16 & 17 Vict. c. 129, the jurisdiction over the Cinque Port Pilots was, as we have seen, vested in the Society or Fellowship of the Cinque Port Pilots. This body was regulated in the first instance by the 3 Geo. 1, c. 13, and more recently by the 6 Geo. 4, c. 125, as amended by the 9 Geo. 4, c. 86, the 3 & 4 Vict. c. 68, and the 12 & 13 Vict. c. 88. These acts, except so much of the 16 & 17 Vict. c. 129 as transfers to the Trinity House the former jurisdiction of the Cinque Ports, are now repealed by the Merchant Shipping Repeal Act, 1854 (the 17 & 18 Vict. c. 120). They have been sometimes called General Pilot Acts, but this is not correct, since they applied generally only to the districts named in their preambles. See the *Attorney-General v. Case*, 3 Price, 316, and *ante*, p. 206, note (*v*). The Trinity House has for centuries appointed pilots to conduct ships into, out of, and upon the Thames, through the North Channel, to or by Orfordness, and round the Long Sand Head, or through the Queen's Channel, the South Channel, or other channels, into the Downs, and from and by Orfordness, and up the North Channel, and up the Thames and Medway, and the creeks or chan-

nels belonging thereto. The first public act which regulated this corporation was the 5 Geo. 2, c. 20. The Cinque Port Pilots were formerly entitled to pilot vessels from Dover, Deal, and the Isle of Thanet, up the Thames and Medway; but by the 9 Geo. 4, c. 86, (which amended the 6 Geo. 4, c. 125,) these pilots could not take charge of ships above, or westward of the landing place at Gravesend, or in the Medway westward of Standgate Creek, unless they were qualified and licensed according to the latter act.

(*k*) See the 6 Geo. 4, c. 125, ss. 8, 11, 26, and 16 & 17 Vict. c. 129, ss. 21, 23. Under the first of these statutes the Trinity House was empowered to vary the rates of pilotage for those districts which are known as the Out Port districts without the consent of the Crown in Council. The reason for this distinction was, apparently, that in these districts no statutory table of rates then was, or has since been established. This power still exists. For, although the above-mentioned statutes are repealed, their provisions in this respect are substantially incorporated in the M. S. Act, 1854, by the operation of s. 331 of that statute. See *ante*, p. 196, note (*m*).

By sect. 369, the Trinity House may continue to appoint sub-commissioners to examine pilots in those districts for which they formerly appointed, and, by consent of the Queen in Council, for other districts in which no particular provision is made by any act of Parliament or charter for the appointment of pilots ; but no pilotage district already under the authority of any sub-commissioners appointed by the Trinity House is to be extended, except with such consent ; and no sub-commissioners so appointed are to be deemed to be pilotage authorities within the meaning of the act.

By sect. 370, the Trinity House are to continue, after due examination by themselves or their sub-commissioners, to appoint and license under their common seal pilots for the purpose of conducting ships within the limits following, or any portion of these limits ; (that is to say,)

- (1.) "The London district," comprising the waters of the Thames and Medway as high as London Bridge and Rochester Bridge respectively, and also the seas and channels leading thereto or therefrom as far as Orfordness to the north and Dungeness to the south ; but so, that no pilot shall be hereafter licensed to conduct ships both above and below Gravesend :
- (2.) "The English Channel district," comprising the seas between Dungeness and the Isle of Wight :
- (3.) "The Trinity House Out Port districts," comprising any pilotage district for the appointment of pilots within which no particular provision is made by any act of Parliament or charter.

By sect. 371, subject to any alteration to be made by the Trinity House, the names of all pilots licensed by the Trinity House are to be published in manner following ; (that is to say,)

- (1.) The Trinity House, at their house in London, are to fix up a notice specifying the name and usual place of abode of every pilot so licensed, and the limits within which he is licensed to act :
- (2.) The Trinity House are to transmit a copy of this notice to the Commissioners of Customs in London, and to the principal officers of Customs resident at all ports within the limits for which the pilot is licensed ; and this notice

is to be posted up by the Commissioners at the Custom House in London, and by the officers at the custom houses of the ports at which they are resident.

By sect. 372, Trinity House pilots must, subject to any Bond, alteration by the Trinity House, execute on their appointment, a bond for 100*l.*, conditioned for the due observance of the regulations and bye-laws of the Trinity House (*l*).

By sect. 374, subject to any alteration to be made by the Trinity House, no licence granted by them is to continue in force beyond the thirty-first day of January next ensuing the date of it; but it may, upon the application of the pilot holding it, be renewed on the thirty-first day of January in every year, or any subsequent day, by indorsement under the hand of the secretary of the Trinity House, or such other person as may be appointed by them for that purpose (*m*).

By sect. 375, the Trinity House has power to revoke or suspend the licence of any pilot appointed by them, in such manner and at such time as they think fit (*n*). Revocation and suspension of licence.

By sect. 376 of the Merchant Shipping Act, 1854, subject to any alteration to be made by the Trinity House, and to the exemptions afterwards contained in the act, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are declared to be the London district and the Trinity House Out Port districts; and the master of every ship navigating within any part of these districts, who, after a qualified pilot has offered to take charge of the ship, or has made a signal for that purpose, either himself pilots the ship, without possessing a certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, incurs for every offence (in addition to the penalty hereinbefore mentioned) an additional penalty not exceeding 5*l.* for every fifty tons burthen of the ship, if the Trinity House certify in writing under their common seal that the prosecutor Compulsory pilotage (Trinity House).

(*l*) This bond is free from stamp duty and all other charges except the expense of preparing it. As to the limitation of the pilot's liability to the penalty of the bond, see sect. 373, and *post*, p. 220.

(*m*) As to the granting of these licences, see *ante*, p. 202.

(*n*) The Court of Queen's Bench will not grant a mandamus to review the exercise of this discretionary power by the Trinity House. This was held on an application by one of the Deal pilots to the Court of Queen's Bench, in Michaelmas Term, 1855.

is to be at liberty to proceed for the recovery of this additional penalty.

By sect. 377 it is provided, that, subject to any alteration to be made by the Trinity House, a sufficient number of qualified pilots must always be ready to take charge of ships coming from the westward past Dungeness; and the Trinity House, by bye-law to be made in the same manner as other bye-laws made under the powers contained in the act, are bound to make such regulations with respect to the pilots under their control as may be necessary in order to provide for an uninterrupted supply of qualified pilots for these ships, and to insure their constant attendance upon and due performance of their duty, both by night and day, whether by cruising between the South Foreland and Dungeness, or by going off from shore upon signals made for the purpose, or by any other means, and whether in rotation or otherwise, as the Trinity House may think fit.

By sect. 378, subject to any alteration to be made by the Trinity House, every master of a ship coming from the westward, and bound to any place in the rivers Thames and Medway must (unless she has a qualified pilot on board, or is exempted from compulsory pilotage), on the arrival of the ship off Dungeness, and thenceforth until she has passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to this buoy, or until a qualified pilot has come on board, display and keep flying the usual signal for a pilot; and if any qualified pilot is within hail, or is approaching and within half a mile, and has the proper distinguishing flag flying in his boat, the master must, by heaving to in proper time or shortening sail, or by any practicable means consistent with the safety of the ship, facilitate the pilot's getting on board, and give the charge of the ship to him; or if there are two or more pilots offering at the same time, to such one of them as may, according to the regulations for the time being in force, be entitled or required to take the charge; and if any master fails to display or keep flying the usual signal for a pilot, or to facilitate the pilot's getting on board, or to give him the charge of the ship, he incurs a penalty not exceeding double the sum which might have been demanded for the pilotage.

Exemptions
from.

By sect. 379, the following ships, when not carrying passen-

gers, are exempted from compulsory pilotage in the London district, and in the Trinity House Out Port districts (o):—

- (1.) Ships employed in the coasting trade of the United Kingdom (p):
- (2.) Ships of not more than sixty tons burthen:
- (3.) Ships trading to Boulogne or to any place in Europe north of Boulogne (q):
- (4.) Ships from Guernsey, Jersey, Alderney, Sark, or Man, which are wholly laden with stone being the produce of those islands:
- (5.) Ships navigating within the limits of the port to which they belong (r):
- (6.) Ships passing through the limits of any pilotage district on their voyages between two places both situate out of these limits, and not being bound to any place within these limits nor anchoring therein.

By sect. 41 of the Merchant Shipping Act Amendment Act, 1862, this last exemption has been extended to all ships whether carrying passengers or not.

The Merchant Shipping Act, 1854, by sects. 380 to 383, provides for the continuance of the then existing rates of pilotage to Trinity House pilots, both in respect of British and foreign ships, subject to alterations by the Trinity House. These sections also provide for the due certifying of the payments by foreign ships, and for the proper application of them.

Rates of pilotage and pilot fund (Trinity House).

And by sect. 384, when a difference arises between a master and pilot as to the draught of a ship trading to or from the port

(o) The exemptions under the former act, 6 Geo. 4, c. 125, will be found in ss. 58—62. See also *Peake v. Screech*, 7 Q. B. 603; *Williams v. Newton*, 14 M. & W. 747—decisions on s. 62, which are inapplicable to the M. S. Act, 1854. The exemptions contained in s. 379 of this act do not affect the exemption given by s. 59 of the 6 Geo. 4, c. 125, which exemption is still in force. *Reg. v. Stanton*, 8 E. & B. 445. See also *ante*, p. 206, note (v).

(p) It has been held, that where a vessel, which was ordinarily occupied in foreign trade, was employed in taking a cargo from Liverpool to London, with a view of sailing from the latter port with a fresh cargo on a foreign voyage, she could not be considered as within this exemption. *The Lloyds*, 32 L. J.,

P. M. & A. 197. See, further, the 6 Geo. 4, c. 125, s. 59. In a case which was decided upon a somewhat similar provision contained in the Liverpool Pilot Act, 5 Geo. 4, c. lxxiii. s. 25, which allows ships "in ballast in the coasting trade" to proceed without a pilot, it was held that a vessel which had come from Calcutta to London, and had there discharged her cargo, and was proceeding in ballast to Liverpool, was not within the exception; *The Agricola*, 2 W. Rob. 10.

(q) *The Wesley*, 1 Lush. A. R. 268.

(r) See the earlier act, 6 Geo. 4, c. 125, s. 63, the provisions of which were more limited, and the decisions upon it in *Thornton v. Boland*, 2 Bing. 219; and *M'Intosh v. Slade*, 6 B. & C. 657.

of London, the Trinity House are, upon the application of either party, to appoint an officer to measure the ship and settle the difference.

Sects. 385 and 386 provide for contributions to a fund for the benefit of incapacitated pilots, and of the widows and children of pilots, and also for the application of this fund.

Sub-commissioners of Hull and Newcastle.

By the Merchant Shipping Act, 1854, sect. 387, the Trinity Houses of Hull and Newcastle are to continue to appoint sub-commissioners of pilotage, not exceeding a certain number ; but it is provided, that these sub-commissioners are not to be deemed pilotage authorities within the meaning of the act.

LIABILITY OF PILOT FOR NEGLIGENCE, &c.

At common law a pilot would be liable for any injury done to another vessel by reason of his misconduct or negligence (*s*) ; as, however, pilots under the jurisdiction of the Trinity House are required to enter into a bond to observe the bye-laws and regulations which may be made by that corporation, it has been thought reasonable to limit the liability of these pilots in cases of negligence to the amount of the penalty of this bond.

The Merchant Shipping Act, 1854, sect. 373, provides, therefore, that a qualified pilot who has executed this bond shall not be liable for neglect or want of skill beyond its penalty and the amount of pilotage payable to him for the voyage on which he is engaged (*t*). We have already seen that this statute contains clauses relating to pilots generally which impose upon them a criminal liability in respect of wilful breaches of duty, and neglects of duty, causing injuries to, or tending to the injury of, the ship or of those on board ; and that there are also numerous offences mentioned in the statute in detail to which penalties are attached (*u*).

LIABILITY OF MASTERS AND OWNERS FOR ACTS OF PILOT.

Important questions have frequently arisen as to the extent to which masters or owners are liable for injuries occasioned by the negligence or want of skill of the pilot whom they have employed (*v*).

(*s*) *Stort v. Clements*, Peake, 107.

(*t*) See the former act, 6 Geo. 4, c. 125, s. 57, which contains a similar provision.

(*u*) See *ante*, p. 213, and the M. S. Act, 1854, ss. 365—367.

(*v*) The Pilot Act, 6 Geo. 4, c. 125,

s. 53, exempted owners and masters from liability for any loss or damage which might happen in consequence of there being no licensed or qualified pilot on board, unless it was proved that the want of a pilot arose from a refusal to take him on board, or from

With regard to the liability of owners or masters for the acts of the pilot; the owners would, at common law, be liable for the consequences of all the tortious or negligent acts of the pilot done within the scope of his agency (*x*). The master, however, being an intermediate agent, would not be liable to his owner for the wrongful acts of the pilot (*y*). Whether he would be liable to a stranger, as, for instance, to a person against whose vessel the ship might strike, through the negligence of the pilot, has been doubted (*z*). The better opinion, however, is that he would not be liable (*a*). The general question is not, however, of much importance, since very few cases of this description can now occur, in which the pilot is not acting under the provisions of some statute limiting or defining the liability of the master and owner.

At common law.

Where pilot taken under statute.

Independently of legislative provision, the Courts of law have always considered, as indeed justice required, that wherever the employment of a pilot was compulsory, that is to say, where, if one was not employed a statutory penalty was incurred, the owners and master were not liable for injuries arising from his acts; for in these cases it was deemed that their authority was superseded by legislative enactment and that it was unjust to hold them responsible for the skill, sobriety, and caution of one whom they had not selected, and over whom they had in fact little or no control (*b*). Where, however, the provisions of the Pilot Act, within the limits of which the ship was, did not subject the master to any penalty, but only to payment of the pilot's allowance on refusal to take him, so that his engagement was to some extent a voluntary act on the part of the master, it was considered, under one of the earlier acts, that the latter continued to be liable (*c*).

the wilful neglect of the master in not heaving to, or using all practicable means consistent with the safety of the vessel, to take on board any pilot who might have offered his services. This act also expressly provided that nothing contained in it should affect the remedy which any person might have in such cases upon any insurance or other contract, unless it was proved that the omission to take a pilot arose from the refusal or wilful neglect of the master; see s. 56. These provisions are omitted in the M. S. Act, 1854.

(*x*) See *ante*, p. 48.

(*y*) *Aldrich v. Simmons*, 1 Stark. 214.

(*z*) *Bowcher v. Noidstrom*, 1 Taunt.

568, where the master was held not to be liable. In that case, however, the pilot was acting beyond the scope of his employment.

(*a*) See 3 Kent Comm. 176, and the American authorities there referred to, and *The Eden*, 2 W. Rob. 442.

(*b*) *Carruthers v. Sidebotham*, 4 M. & S. 77; *Bennet v. Moita*, 7 Taunt. 258; *The Maria*, 1 W. Rob. 95; *The Agricola*, 2 W. Rob. 10; *The Montreal*, 17 Jur. 538. In America, it has been held in some cases that the owners were liable, although the employment of the pilot was compulsory. See Story on Agency, s. 456 *a*, note.

(*c*) See *The Attorney-General v. Case*,

Under the
Merchant
Shipping Act,
1854.

The Merchant Shipping Act, 1854, expressly provides, however, by sect. 388, that no owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of the ship, within any district where the employment of the pilot is compulsory by law (*d*).

This exemption of the owner and master from liability is applicable to those cases only in which the employment of the pilot by whose fault or incapacity the damage is occasioned was compulsory, and does not extend to cases where a pilot has in fact been employed within his district, although it was not compulsory to employ him (*e*).

This provision applies as well to proceedings *in rem* in the Admiralty Courts, as to actions at law (*f*). Even when it ap-

3 Price, 302, which was decided upon the 62 Geo. 3, c. 39, s. 30. The American authorities are consistent with the rule laid down in the text. See Story on Agency, s. 456 *a*, note, where the question is discussed as to whether, in cases of this kind, the employment of the pilot can be said to be voluntary.

(*d*) See the former act, 6 Geo. 4, c. 125, s. 55. In *Ritchie v. Bouzfeld*, 7 Taunt. 309, which was decided upon a somewhat similar provision contained in s. 30 of the 62 Geo. 3, c. 39, it was argued, but not successfully, that the statute did not apply to protect the owner or master from being answerable for injuries done to the vessels of others. The 6 Geo. 4, c. 125, precluded all question on this point by using the words "to any person or persons whomsoever." The former Pilot Acts, 52 Geo. 3, c. 39, s. 30, and 6 Geo. 4, c. 125, s. 55, exempted owners and masters from liability in those cases only in which the pilot was "acting under or in pursuance of" the acts; hence a question arose as to whether the exemption applied to all pilotage districts, or only to those named in the preamble of the statutes. See *The Attorney-General v. Case*, 3 Price, 802; *Carruthers v. Sidebotham*, 4 M. & S. 77; *Dodds v. Embleton*, 9 Dowl. & Ry. 27; see also *Beilby v. Scott*, 7 M. & W. 93, and the observations on this case, and on *Carruthers v. Sidebotham*, in the judgment of Dr. Lushington in *The Eden*, 10 Jur. 296; *S. C.*, 4 Notes of Cases, 460, and in *The Agricola*, 2 W. Rob. 19. The wider and more distinct words of the M. S. Act, 1854, "within any district where the employment of such pilot is

compulsory by law," admit of no similar doubt.

(*e*) This is clear from the words of the section. See also *The Earl of Auckland*, 1 Lush. A. R. 164. The language of the 6 Geo. 4, c. 125, s. 55, was more general and exempted owners and masters where the damage arose from the incapacity of "any licensed pilot acting in charge of any such ship or vessel, under or in pursuance of any of the provisions of this act." Under these words it was held that if a ship was within a district to which the act applied, the protection existed not only in those cases in which it was compulsory to take a pilot on board, but also where a pilot had been taken on board, and was forced to serve if called upon, but the master was not bound to employ him. *Lucey v. Ingram*, 6 M. & W. 302; *The Fama*, 2 W. Rob. 184. And where a steam tug came in contact with and injured a ship, and it was proved that the crew of the former had been guilty of no negligence, and had obeyed the orders of a licensed pilot on board the vessel which she was towing, it was held that the owner was not liable. *The Duke of Sussex*, 1 W. Rob. 270. It was decided also that the protection did not the less exist by reason of the pilot being in the permanent employment of the owner, provided he was duly licensed. *The Batavier*, 4 Notes of Cases, 356; *S. C.*, 10 Jur. 19, affirmed in *P. C.*; *The Netherlands Steam Boat Company v. Styles*, 9 Moore, P. C. C. 286.

(*f*) The 6 Geo. 4, c. 125, as well as the 5 Geo. 2, c. 20, provided that nothing contained in them should affect or impair the jurisdiction of the Court of Admiralty. In consequence of

pears, however, that a pilot was on board, it is still a question of fact for the jury, whether at the time of the collision he had taken upon himself the management of the ship, and whether the damage arose from his incapacity (g).

The Courts of common law and the Court of Admiralty acted, until recently, upon different rules with regard to the question upon whom the onus of proof in these cases lies. It was held in an action at common law that if a collision happened whilst a licensed pilot was on board it was to be presumed that the damage was occasioned by his negligence (h). The Court of Admiralty however decided, with more justice, that before an owner or master could claim the benefit of the exemption given by the statute, he must adduce some affirmative proof to show that his vessel was under the charge of a licensed pilot when it inflicted the injury, and that the injury was the result of his act (i). The rule acted upon by the Court of Admiralty on this subject has now been approved of and affirmed by the Privy

this, considerable difference of opinion arose as to the effect upon proceedings in that Court of the clauses which protected owners and masters. In a suit which was brought for damage done by a foreign vessel whilst going down the Thames under the charge of a licensed pilot, it was held that the exemption from responsibility given by the act to owners and masters was restricted to the Municipal Courts, in which the remedy is against the parties, and that the remedy against the vessel herself still existed in the Admiralty Courts, which, acting on the law of nations, have always exercised in these cases a jurisdiction which was not taken away in terms by the statutes; and it was doubted whether the provisions of the Pilot Act applied to foreign vessels, which, when outward bound, could not be compelled to take a pilot on board. *The Girolamo*, 3 Hagg. 169. This decision related to a foreign vessel; the reasons given in the judgment apply, however, equally to vessels of this country, and in some other cases it was held, that even with respect to these vessels the liability of the owners in the Court of Admiralty was not affected by the statute. See *The Neptune the Second*, 1 Dods. 467; *The Transit*, March 17, 1838, reported 1 Monthly Law Magazine, 582. But in a later case, where the question

arose with respect to an English vessel, it was held that the responsibility of the owners in the Admiralty Court was limited by the statute. *The Protector*, 1 W. Rob. 45; see also *The Maria*, *ib.* 95; *The Agricola*, 2 W. Rob. 10. In these decisions, in one of which an elaborate judgment was given, no notice was taken of *The Girolamo*. See also *The Vernon*, 1 W. Rob. 316, a decision which seems to assume the correctness of the ruling in *The Protector*. In another case it was held that the statute applied as well to foreign vessels when proceeded against in the Admiralty Court, as to those of this country; *The Christiana*, 2 Hagg. 183. Although with respect to foreign vessels the question was open to some doubt, with regard to English vessels the statute clearly applied as well to proceedings *in rem* in the Admiralty Court as to suits *inter partes*. See the judgment of the Privy Council in *Stuart v. Isomonger*, 4 Moore, P. C. C. 11, 21, and *The Wild Ranger*, 32 L. J., P. M. & A. 49. In the M. S. Act, 1854, it will be seen that there is no such exception.

(g) *Cattis v. Herbert*, 3 Stark. 12.

(h) *Bennet v. Moita*, 7 Taunt. 258; see also *Ritchie v. Boufield*, 7 Taunt. 309.

(i) *The Protector*, 1 W. Rob. 56; *The Diana*, *ib.* 131.

Council (*j*), and adopted in Westminster Hall (*k*); and it is now clear that the object of the statutory exemption in favour of owners and masters is to protect them in those cases only in which the pilot alone is the author of the injury (*l*), and that the *onus* lies on the owner of the ship to prove that the damage was occasioned by the fault of the pilot (*m*).

Where master
or crew are in
fault.

The reasoning upon which these decisions are founded, shows that this exemption does not extend to instances where the master or any of the crew are *in pari delicto* with the pilot, and the damage is occasioned in part by their negligence or misfeasance; and accordingly this has been so held (*n*).

Where act not
within pilot's
duty.

It must be remembered also that a ship is under the orders of a pilot for the purposes of navigation only, and that the mere fact of taking a pilot on board, where it is compulsory to do so, does not exonerate the master and crew from the proper observance of their own duty (*o*); therefore, to enable a master to screen himself from liability by setting up neglect on the part of the pilot, he must show that the act complained of was one within the duties which properly attach to the latter, and not one which being connected with the general management of the ship falls to the share of the master, even although there be a pilot on board. Thus in one case where a bad look out had

(*j*) *Hammond v. Rogers*, 2 Moore, P. C. 160, on appeal from *The Christiana*, 2 Hagg. 183. It was held in this case that the owners were not protected if blame could be imputed as well to the pilot, as to the master and crew. The point was not raised in the Court of Admiralty. See also *The Admiral Boxer*, 1 Swab. A. R. 193; *The Mobile*, *ib.* 69; *The North German Lloyd Steam Ship Company v. Elder*, 14 Moore, P. C. C. 241, and *The Schwalbe*, 1 Lush. A. R. 239.

(*k*) *Rodriguez v. Mellish*, 10 Exch. 110.

(*l*) See the judgment of Dr. Lushington in *The Protector*, 1 W. Rob. 64; and the cases cited above in note (*j*).

(*m*) *Pollak v. M'Alpin*, 7 Moo. P. C. C. 427.

(*n*) See the cases cited above; also *The Mobile*, 1 Swab. 69; S. C. on appeal, *ib.* 127; 10 Moore, P. C. C. 467, *nom. Bates v. Don Pablo Sora*; *The Borussia*,

1 Swab. A. R. 94; *The General de Caen*, 1 Swab. A. R. 9; the judgments of Sir J. Nicholl, in *The Girolamo*, 3 Hagg. 176; and in *The Diana*, 1 W. Rob. 131; S. C., before the Privy Council, *Stuart v. Isenmenger*, 4 Moore, P. C. C. 11; *The Massachusetts*, 1 W. Rob. 371; and *The Ripon*, 6 Notes of Cases, 245. Many of these decisions, although upon the earlier acts, are applicable to the statutes now in force. The Court of Admiralty has said, that in order to show that the owner's liability still exists, the evidence must be such as to enable the Court to come to a clear conclusion that there was actual neglect or want of care on the part of the master or crew, and that if the evidence is nicely balanced it will incline to hold the owner exempt. See *The George*, 4 Notes of Cases, 163; S. C., 9 Jur. 672.

(*o*) *Per* Dr. Lushington, in *The Diana*, 1 W. Rob. 135. See also *ante*, p. 195, note (*g*).

been kept by the master and crew, and in another, where the evidence showed that, after a collision had occurred through the fault of the defendant's ship, the damage done was materially increased by the master omitting to cut a lanyard when he should have done so, it was held that these acts of negligence rendered it impossible to set up as a defence the acts of the pilots (*p*). The same rule would also be applicable, in some cases, to improper acts done by one of the crew by order of the pilot, in a matter which should have been controlled by the master (*q*). But matters such as the bringing of the ship into a roadstead, or the time and manner of dropping her anchor on taking her berth in port, are within the exclusive duty of the pilot, and if the master is guided in these cases by the pilot's judgment, the statute intervenes and protects him (*r*).

It was held before the passing of the Merchant Shipping Act, 1854, upon the general principle of international law which requires that a person suing in the Courts of any country must take his remedy as the law of that country allows it to him, that if a foreign vessel was injured by an English ship within the limits of the then Pilot Act, the latter, if she had a licensed pilot on board, was protected to the same extent as she would have been against the claim of another English vessel (*s*). The language of sect. 388 of the Merchant Shipping Act, 1854, which now limits the responsibility of shipowners in cases of injury caused by the acts of a pilot in charge of the ship is very wide; and it is probable, as this section uses the words "any ship," and by sect. 330 this portion of the statute is not confined to any particular class of ships, that the existing statutory protection is intended to extend to all vessels, as well foreign as English, within the districts in which pilotage is compulsory. Foreign vessels.

(*p*) *The Diana*, 1 W. Rob. 181; *The Massachusetts*, 1 W. Rob. 371.

(*q*) See *Bowcher v. Noidstrom*, 1 Taunt. 568.

(*r*) *The George*, 2 W. Rob. 386; *The Agricola*, 2 W. Rob. 10; per Dr. Lushington in *The Lochlibo*, 3 W. Rob. 321; *Pollak v. M'Alpin*, 7 Moore, P. C. C. 427.

(*s*) *The Vernon*, 1 W. Rob. 316. In the judgment of Dr. Lushington in *The Wild Ranger*, 32 L. J., P. M. & A. 49,

the authorities with reference to the effect upon foreign ships of English statutory provisions limiting the responsibility of shipowners in cases of collision generally, and in cases of compulsory pilotage, are collected and commented on. We have already seen (*ante*, p. 51) that the protection given by the M. S. A. Amendment Act, 1862, to shipowners, is applicable by the terms of that act to foreign ships. See also *ante*, p. 209.

CHAPTER VI.

CONTRACT OF AFFREIGHTMENT AND ITS INCIDENTS.

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THE contract of affreightment may be considered under two general heads: First, the contract by charter-party; and, secondly, the contract for carriage in a general ship under a bill of lading.

The most important terms of the contract for the carriage of goods in a merchant ship are those which regulate, on the one hand, the conveyance of the goods by the shipowner, and, on the other, the payment of the freight, which is the usual consideration for the shipowner's share of the undertaking. The contract by charter-party differs in many important respects from that which is evidenced by the bill of lading, but as the rules which regulate the payment of freight under both of these contracts are substantially the same, it would be inconvenient to divide this portion of the subject into two distinct parts.

It is therefore proposed to consider, 1, *the contract by charter-party, the general rules by which it is governed, and the remedies for its enforcement*; 2, *the contract for the carriage of goods in a general ship, and the ordinary rights and liabilities resulting from it*; and 3, *the right to freight generally, both under charter-parties and under contracts by bill of lading, and the important incidents connected directly with this right; including the remedies for recovery of freight, and the shipowner's lien in respect of it.*

The second part of this Chapter will then be devoted to the consideration of the subjects of *Demurrage*, *Stoppage in transitu*, and *General average*.

First, *as to the contract.*

The charter-party (*carta partita*) is an agreement by which a Charter-party. shipowner lets an entire ship, or a part of it, to a merchant for the conveyance of goods, binding himself to transport them to a particular place for a sum of money which the merchant undertakes to pay as freight for their carriage (a).

Charter-parties may be, but now usually are not, under seal. They embody the terms upon which the shipowner lends the use of the ship, and contain stipulations, varying in each particular case, as to the rate of remuneration, the nature of the voyage, and the time and mode of employing the vessel. Nature of contract.

(a) See Pothier, *Contrat de Louage Maritime*, Pt. 1. Charter-parties are usually effected by the agency of brokers who are employed by the shipowner and paid by a commission. See *Burnett v. Bouch*, 9 C. & P. 620; *Cunard v. Van Oppen*, 1 F. & F. 716; *Allan v. Sundius*, 1 H. & C. 123; *Gibson v. Crick*, *ib.* 142.

Stamps.

Every charter-party, or agreement, or contract for the charter of any ship, and every memorandum, letter or other writing between the captain, master or owner of any ship and any other person, for or relating to the freight or conveyance of any money, goods or effects on board any ship must be stamped with a five shilling stamp (b). The stamp may be imposed, without the payment of any penalty, within fourteen days after the charter-party bears date and has been executed by the party who first executes it. Within a month from this time the stamp may be obtained on payment of a penalty of 10*l*. Beyond this period it cannot be affixed at all (c).

The following form of charter-party will show many of the stipulations in ordinary use:—

It is this day mutually agreed between Messrs. [A. B.], agents for owners of the good ship or vessel called [*The James Scott*], A 1, 12, and newly coppered, of &c., of the burthen of 340 tons register measurement or thereabouts, whereof [C. D.] is master, now in [*Liverpool*], and Messrs. [E. F., of *Liverpool, merchants*,] that the said ship being tight, staunch and strong, and every way fitted for the voyage, shall with all convenient speed load in [*Prince's or Salt House Dock*] a full and complete cargo of lawful merchandize, not exceeding 400 tons in weight, and therewith proceed to [*Hong Kong or Shanghai*], as ordered before sailing, or so near thereunto as she may safely get, and there deliver the same agreeably to bills of lading; after which she shall load there, or, if required, proceed to one other safe port in [*China*], and there load in the usual and customary manner from the agents of the said charterers a full and complete cargo of tea or other lawful merchandize, the cargoes being brought and taken from alongside the vessel at charterer's risk and expense: ship is to have liberty to put on board eighty tons kentledge, copper-drop, or other equally dead weight, and to retain it on board during the voyage, which the said merchants bind themselves to ship,—not exceeding what she can reasonably stow and carry over and above her tackle, apparel, pro-

(b) 5 & 6 Vict. c. 79, Schedule. This act repealed the duties imposed by the 55 Geo. 3, c. 184. Similar provisions were enacted for Ireland by the 5 & 6

Vict. c. 82, s. 34, which has been continued from time to time. See the 14 & 15 Vict. c. 18.

(c) 5 & 6 Vict. c. 79, s. 21.

visions and furniture, and being so loaded shall therewith proceed to [*Liverpool or London*], as ordered on signing bills of lading abroad, or so near thereunto as she may safely get (*d*), and there deliver the same in the usual and customary manner to the said charterers or their assigns, they paying freight for the same at the rate of [*7l. 10s. sterling per ton of fifty cubic feet*] for tea delivered, for the round out and home; a deduction of [*5s. per ton*] to be made if ship be discharged and loaded at [*Hong Kong*]: other goods, if shipped, to pay in customary proportion; in consideration whereof the outward cargo to be carried freight free; payment whereof to become due and to be made as follows:—[*800l. on sailing, by charterer's acceptance at three months' date, what money the master may require for the ordinary disbursements of the vessel at her port of discharge and loading abroad, free of interest, paying two and a half per cent. commission, subject to insurance, at the current rate of exchange, and the balance on the unloading and right delivery of the cargo, by good and approved bills on London at two months' date, or cash equal thereto.*] Thirty running days (Sundays excepted) are to be allowed the said merchant, if the ship is not sooner despatched, for loading in [*Liverpool*], and forty-five like days for all purposes abroad, and ten days on demurrage over and above the said laying days and time herein stated [*at 10l. sterling per day*], paying day by day as the same shall become due. The time occupied in changing ports not to count as laying days. Should it be necessary for the vessel to take in dunnage or ballast the same to be provided by the owners. The master to sign bills of lading at such rates of freight as may be required by the agents of the charterers, without prejudice to this charter-party (*e*); and the owners to have an absolute lien upon the cargo for the recovery of all freight, dead freight, demurrage, &c., due to the ship under this charter-party. *The act of God, the Queen's enemies, fire, strike of pitmen, and all other damages and accidents of the seas, rivers and navigations, of what*

(*d*) See as to the meaning of this clause, *Parker v. Winlow*, 7 E. & B. 942, and *Bastifell v. Lloyd*, 1 H. & C. 388.

(*e*) See as to the construction of this

clause, *Shand v. Sanderson*, 4 H. & N. 381; *Kern v. Deslandes*, 10 C. B., N. S. 205, and *post*, p. 298.

nature and kind soever, throughout the voyage being excepted.

The vessel to be consigned to the charterer's agents abroad free of commission. On the return of the ship to [*Liverpool*] she shall be addressed to [*G. H. & Co.*] brokers, or to their agents at any port of discharge. Penalty for non-performance of this agreement the estimated amount of freight (*f*).

Construction of contract.

Charter-parties are construed liberally and reasonably so as to carry out the intention of the parties as apparent on the instrument (*g*). It is often, however, difficult to apply this rule in consequence of the short and ambiguous terms in which these contracts are not uncommonly expressed. If the charter-party is under seal, the parties, as in the case of other deeds, are not estopped from showing that it was executed on a day different from the day of its date. It will also, in this case, like any other deed, speak from its delivery or execution, and not from its date; and words indicating time by relation will be construed to relate to the delivery or execution, and not to the date, unless it be referred to in terms; and even then, the same

(*f*) See *Gilkison v. Middleton*, 2 C. B., N. S. 184.

(*g*) *Oshey v. Hicks*, Cro. Jac. 263; *Marshall v. De la Torre*, 1 Esp. 368. See also the judgment of Lord Mansfield in *Hall v. Cazenove*, 4 East, 477, *Soames v. Loneragan*, 2 B. & C. 564, the judgment of Maule, J., in *Crozier v. Smith*, 1 M. & Gr. 415, *Browne v. Burton*, 17 L. J., Q. B. 49, the judgment of Byles, J., in *Valente v. Gibbs*, 6 C. B., N. S. 286, and *Dimech v. Corlett*, 12 Moo. P. C. C. 199. It is important to bear in mind, that although in the earlier cases the Courts of law not unfrequently rejected, or explained away harsh and oppressive stipulations contained in agreements, thus, in effect, making new contracts for the parties, the rule acted upon at present is to give to clear and unambiguous stipulations their obvious meaning, without reference to the possible hardship of the consequences. This rule, which is founded in good sense, and tends to make persons careful at the time when they are entering into contracts, is thus referred to in a recent judgment of the Court of Queen's Bench. "We are clear," said that Court in *Stadhard v. Lee*, 3 B. & S. 364, "that where from the whole

tenor of the agreement it appears that however unreasonable and oppressive a stipulation or condition may be, the one party intended to insist upon and the other to submit to it, a Court of justice cannot do otherwise than give full effect to the terms which have been agreed upon between the parties. It frequently happens in the competition which notoriously exists in the various departments of business, that persons anxious to obtain contracts submit to terms which when they come to be enforced appear harsh and oppressive. From the stringency of such terms, escape is often sought by endeavouring to read the agreement otherwise than according to its plain meaning, but the duty of a Court in such cases is to ascertain and give effect to the intention of the parties as evidenced by the agreement, and though where the language of the contract will admit of it, it should be presumed that the parties meant only what was reasonable, yet if the terms are clear and unambiguous, the Court is bound to give effect to them without stopping to consider how far they may be reasonable or not."

rule of construction will be applied if the date is an impossible one (*h*).

Charter-parties may, like other mercantile contracts, be explained, but not contradicted, by evidence of the usage of the particular trade to which the contract relates (*i*). Thus, where the contract was to pay so much freight for cotton, to be calculated at a certain number of feet per ton, evidence was admitted to show that there was an usage in the trade to pay according to the measurement taken at the shipping port before the goods were loaded (*j*). So, evidence of this kind is admissible to show that a particular mode of stowing the cargo is proper in a certain trade (*k*). It must however be recollected, that the character and description of evidence admissible in these cases is the fact of a general usage and practice prevailing in the particular trade or business, not the judgment and opinion of the witnesses (*l*). Where a question arose as to the meaning of the words, "in turn to deliver" at the port of Algiers, it was held that the testimony of three or four witnesses, speaking to a course of business that had grown up within only about five years, and with reference to charter-parties differing in language from the charter-party in question, was not sufficient to establish such a general usage as to enable the Court to construe these words in a particular way (*m*).

Construction by usage.

In another case, it was required by a charter-party that a ship should proceed to Newcastle and be ready to take on board a cargo, consisting partly of coals and partly of coke, "in regular turns of loading." It appeared that at Newcastle the loading of coal was by act of Parliament regulated by "turns," but that there was no statutory regulation as to the loading of coke. An action having been brought upon the charter-party

(*h*) *Hall v. Catenove*, 4 East, 477; *Steele v. Mart*, 4 B. & C. 272; *Styles v. Wardle*, *ib.* 908.

(*i*) See *Palmer v. Blackburn*, 1 Bing. 61, which is a case of a policy of insurance; *Magee v. Atkinson*, 2 M. & W. 446; and *Spartali v. Benecke*, 10 C. B. 212. In *Field v. Lelean*, 6 H. & N. 617, doubts were expressed in the Exchequer Chamber as to the correctness of the decision in *Spartali v. Benecke*, although the principle upon which that case was intended to be decided was recognized. See also the rules laid down in the judgments in *Mallan v.*

May, 13 M. & W. 517, and *Cockburn v. Alexander*, 6 C. B. 791; and *post*, Chap. VII., INSURANCE.

(*j*) *Bottomley v. Forbes*, 5 B. N. C. 121; see also *Benson v. Schneider*, 7 Taunt. 271; *Haynes v. Holliday*, 7 Bing. 587.

(*k*) *Gould v. Otiver*, 2 M. & Gr. 208.

(*l*) *Cunningham v. Fonblanque*, 6 C. & P. 44; *Lewis v. Marshall*, 7 M. & Gr. 729.

(*m*) *Robertson v. Jackson*, 2 C. B. 413. See as to the meaning of the expression "loading in turn," *Taylor v. Clay*, 9 Q. B. 713, and *Lawson v. Burness*, 1 H. & C. 396.

in the County Court for delay in loading the coke, it was held by the Court of Common Pleas that the meaning of the contract was that the coal should be loaded according to the provisions of the statute, and that evidence ought to have been admitted to show that there was a practice or usage at Newcastle to load coke in a similar manner (*n*).

There have been of late some important decisions upon this subject. In a recent case, goods were shipped at New Orleans, and by the terms of the bill of lading they were deliverable at Liverpool to order or assigns, "he or they paying freight for the said goods five-eighths of a penny sterling per pound, with five per cent. primage and average accustomed." It was admitted, that by a custom prevailing at Liverpool in the trade in question three months' interest or discount was deducted from freights payable under bills of lading on goods coming from New Orleans, but it was contended by the shipowner that he was entitled to the full freight, the custom being inconsistent with the written contract. It was, however, held by the Court of Queen's Bench, that the custom was not repugnant to the written contract, but might well be annexed to the terms of the bill of lading (*o*). In another case, the charter-party provided that "a full and complete cargo of sugar and molasses" should be laden on board the ship at Trinidad. It was held that evidence was admissible to show that a custom existed at that place to load sugar and molasses in puncheons, and consequently, that a cargo loaded in this way was a sufficient compliance with the contract, although in this mode of packing there was necessarily some diminution of the cargo by reason of broken stowage. In the judgment in this case, the principle laid down in the earlier decisions, namely, that the evidence in order to be admissible must explain the contract, and not contradict or control it, was clearly recognized (*p*). In a later case, in which it was agreed by the charter-party that the ship should "load with all possible despatch, in the customary manner, a full and complete cargo of coke, to be loaded in regular turn;" it was

(*n*) *Leidmann, app., v. Schultz, resp.*, 14 C. B. 38; and see *Hudson v. Clementson*, 18 C. B. 213.

(*o*) *Browne v. Byrne*, 3 E. & B. 702. It may be questioned whether, consistently with the principles sanctioned by the decisions on this subject, the evidence was not in this case inadmissible.

See the observations on this case in *Cuthbert v. Cumming*, 10 Exch. 815; and *Phillipps v. Briard*, 1 H. & N. 26. See also *Hall v. Janson*, 4 E. & B. 500; and *Falkner v. Earle*, 3 B. & S. 360.

(*p*) *Cuthbert v. Cumming*, 10 Exch. 809. This judgment was affirmed in the Exchequer Chamber, 11 Exch. 405.

held that evidence was not admissible to show that, according to a custom at the port of lading under a contract so framed, the shipowner was bound (provided reasonable despatch was used) to wait his turn, according to a list kept by a coke manufacturer who was not named in the contract, but whose name was mentioned at the time when it was entered into. The Court considered that such evidence would be inconsistent with the terms of the charter-party (*q*). Where a declaration stated that a charter-party had been entered into between the plaintiffs as charterers, and the defendant as the owner of a ship, by which the ship had been consigned to the agents of the plaintiffs at Hong Kong free of commission on the charter, and then proceeded to allege, that under such a charter the agents of the plaintiffs at Hong Kong were, by the custom of merchants in London, entitled to procure a charter or cargo for the ship for any voyage from Hong Kong, being paid thereon a broker's commission on any freight payable under such charter, unless this right was excluded by express contract, it was held that the declaration was bad, since the custom did not explain the charter, but added a new term to it (*r*). And in a later case, where goods had been purchased by a broker for an undisclosed principal, but a note was signed at the time of the purchase representing that the sale was made by the broker to his principal (not however naming him) for the persons who acted as the brokers of the sellers, it was held that evidence was admissible to prove an alleged custom or usage in the particular trade, that when a broker purchased without disclosing the name of his principal he was himself liable as purchaser (*s*).

It is for the Court to construe all written contracts, but if particular words have obtained by mercantile or other usage a peculiar meaning, it is for the jury to say what the meaning of these expressions is, and then for the Court to decide on the meaning of the contract (*t*). In charter-parties, as in other

(*q*) *Hudson v. Clementson*, 18 C. B. 212. Where a charter-party provided that a ship should proceed to a particular port, and there load a full cargo of coals in the customary manner, no time being mentioned, it was held that this meant a loading according to the usage of the port, and within a reasonable time, without reference to unforeseen casualties; *Adams v. The Royal*

Mail Steam Packet Company, 5 C. B., N. S. 492.

(*r*) *Phillipps v. Briard*, 1 H. & N. 21.

(*s*) *Humfrey v. Dale*, 7 E. & B. 266. Affirmed *Cam. Scacc.*, Martin, B., and Willes, J., *dissentientibus*, 1 E., B. & E. 1004.

(*t*) *Smith v. Bland*, Ry. & M. 260; *Hutchison v. Bowker*, 5 M. & W. 535; *Smith v. Thompson*, 8 C. B. 44.

mercantile contracts, the expression "a month" is construed to mean a calendar month (*u*).

It is important to recollect, that although mercantile contracts are construed liberally and reasonably, their express terms cannot be extended by implication. Therefore, where a contract for the sale of a cargo of Indian corn which had been shipped abroad contained an express warranty that it had been shipped "in a good and merchantable condition," it was held to be a misdirection to leave to the jury the question whether, at the time of the shipment, it was in a good and merchantable condition for a foreign voyage (*v*).

Mistakes in contract.

A misdescription of the ship's burthen in the charter-party will not discharge the charterer from the performance of his contract, unless, looking at the mode in which the agreement is framed, and the surrounding circumstances, it appears that it was the intention of the parties that the statement should not be merely a matter of description, but a warranty. Where a merchant covenanted to load a full cargo, the ship being within his reach for the purpose of examination, and the burthen mentioned in the charter-party was "261 tons or thereabouts," which was, in fact, considerably below the real tonnage, it was held that he was not discharged by loading the number of tons by which the burthen had been described (*w*). And in a later case (*x*), in which a charter-party described a ship as "of the measurement of 180 to 200 tons or thereabouts," it was held that this statement did not amount to a warranty as to the tonnage, but was a matter of description only, and consequently that the charterer, who had contracted to put on board a complete cargo, could not refuse to load on discovering that the tonnage, in fact, slightly exceeded 257 tons (*y*).

(*u*) *Jolly v. Young*, 1 Esp. 186; see also *Simpson v. Margitson*, 11 Q. B. 23.

(*v*) *Dickson v. Zizinia*, 10 C. B. 602.

(*w*) *Hunter v. Fry*, 2 B. & A. 421; see also *Molloy*, B. 2, c. 4, s. 8. See as to the meaning in contracts for the sale of goods of the expressions "say from 1000 to 1230 gallons," and "say not less than 100 packs," *Guillim v. Daniell*, 2 C., M. & R. 61, and *Leeming v. Snaith*, 16 Q. B. 275. As to the meaning of the word "about," when prefixed to a quantity, see *Cross v. Elgin*, 2 B. & Ad. 106; *Bourne v. Seymour*, 16 C. B. 337; *Moore v. Campbell*,

10 Exch. 323.

(*x*) *Barker v. Windle*, 6 E. & B. 675. Where a ship is described in the charter-party as A 1, this is not a warranty that she shall continue so; *Hurst v. Osborne*, 18 C. B. 144. Where, in a charter-party made at New York between British subjects, a ship was described as "the A 1, Br. brig *Hannah Eastoe* of Liverpool," it was held that this was a warranty that the ship was then classed A 1 at Lloyds. *Routh v. Macmillan*, 33 L. J., Exch. 38.

(*y*) See *post*, p. 241, note (*r*).

It is often difficult in construing charter-parties to ascertain whether particular stipulations amount to conditions precedent. This is to be determined by seeking for the *intention of the parties as apparent on the instrument, and from the surrounding circumstances*, and by applying the ordinary rules of construction to each particular case. It does not depend on any formal arrangement of the words, but on the reason and sense of the thing as it is to be collected from the whole contract (*x*). Generally speaking, any stipulation which goes only to a portion of the consideration, or, in other words, the breach of which would deprive the party who has a right to insist upon it of a portion only of the benefit of his contract, will be construed not to be a condition precedent (*a*). It must, however, be recollected that this rule, although a very useful one, is only a rule of *construction*, a means of discovering the intention of the parties, to be applied where the words will bear either sense. For it is clear that the Courts will not make contracts for the parties, and that if they use language which distinctly shows that they intend such a stipulation to be a condition precedent, it will be so construed (*b*). Constructions, however, leading to absurd and unreasonable results will be avoided, if this can be done without violence to the terms used, because where the intention is not clearly expressed the parties will not be presumed to have meant to make an absurd or unreasonable contract (*c*).

The following cases will show the application of these rules. Where a memorandum of charter contained the words "the vessel to sail from England on or before the 4th of February

(*x*) "The law will rather invert the words than pervert the sense," Bacon's Law Tracts, 236. Case of Revocation of Uses. See also the judgment of the Privy Council in *Dimech v. Corlett*, 12 Moo. P. C. C. 199, where it is said, "It is important not to give to mercantile instruments an unnecessarily strict construction, but such a one as, with reference to the context, and the object of the contract, will best effectuate the obvious and expressed intent of the parties."

(*a*) *Boone v. Eyre*, 1 H. Bl. 273, note (*a*); *Shubrick v. Salmond*, 3 Burr. 1637; *Ritchie v. Atkinson*, 10 East, 295; *Puller v. Staniforth*, 11 East, 232; *Storer v. Gordon*, 3 M. & S. 308; *Fothergill v. Walton*, 8 Taunt. 576; *Shadforth v. Higgin*, 3 Camp. 385, and note, p. 387;

Deffell v. Brocksbank, 4 Price, 36; *S. C.* 3 Bligh, 561; *Glaholm v. Hays*, 2 M. & Gr. 257; see also the notes to *Pordage v. Cole*, 1 Wms. Saund. 3191; *Dimech v. Corlett*, 12 Moo. P. C. C. 199; *Roberts v. Brett*, 6 C. B., N. S. 611; *Hoare v. Rennie*, 5 H. & N. 19; *Seeger v. Duthie*, 8 C. B., N. S. 45; *The London Gas Light Company v. The Chelsea Vestry*, *ib.* 215, and *Behn v. Burness*, 1 B. & S. 377; *S. C.*, in Cam. Seacc., 32 L. J., Q. B. 204.

(*b*) *Bright v. Cooper*, 1 Brownl. 21; *Stavers v. Curling*, 3 Bing. N. C. 368.

(*c*) See the judgment of Lord Ellenborough in *Hall v. Casenove*, 4 East, 477; *Bornmann v. Tooke*, 1 Camp. 377; *Puller v. Staniforth*, 11 East, 232; *Thompson v. Inglis*, 3 Camp. 428; and *Cranston v. Marshall*, 5 Ex. 395.

Conditions
precedent.

next;" it was held that this stipulation formed a condition precedent, as the whole success of a mercantile adventure depends ordinarily on the commencement of the voyage by a given time (*d*). So, where the charter-party provided that the ship should sail from Amsterdam for Liverpool "on or before the 15th March next," it was held that the sailing of the ship on or before that day was a condition precedent to the obligation of the charterer to load the vessel, although the sailing of the ship was prevented by one of the perils excepted in the charter-party, and the ordinary exception of perils of the seas &c. contained in the charter was followed by the words "throughout the charter-party" (*e*). Where by a charter-party it was agreed, amongst other things, that the ship should load in the London Docks, and there take on board a cargo, that the captain should attend daily at a broker's office to sign bills of lading as customary, and that the ship should be ready for loading on or before the 10th of November, or that the charterers should have the option of cancelling the agreement, it was held that the stipulation as to the day on which the ship was to be ready was a condition precedent; but that it was otherwise, as to the attendance of the master at the broker's office to sign bills of lading (*f*).

Where a charter-party described the ship as then at sea, and "having sailed three weeks ago," this was considered to be a material statement and to amount to a warranty of the fact (*g*).

And a provision in a charter-party, that a ship should be ready to sail "in all May," was also held to be a condition precedent (*h*).

(*d*) *Glaholm v. Hays*, 2 M. & Gr. 257. It was held to be otherwise where the charter-party had not been executed until after the day named. *Hall v. Casanova*, 4 East, 477.

(*e*) *Croockewit v. Fletcher*, 1 H. & N. 893.

(*f*) *Seeger v. Duthie*, 8 C. B., N. S. 45. As to whether, when no precise time for sailing is mentioned, the sailing in a reasonable time is a condition precedent or merely matter of cross action, see the judgment of Byles, J., in this case; also *M'Andrew v. Adams*, 1 Bing. N. C. 29, and *Tarrabochia v. Hickie*, 1 H. & N. 183.

(*g*) *Ollive v. Booker*, 1 Exch. 416. Some doubt was thrown upon this case by the decision of the Privy Council in *Dimech v. Corlett*, 12 Moo. P. C. C. 199,

see *post*, p. 240. But it was approved of by the Exchequer Chamber in *Behn v. Burness*, 32 L. J., Q. B. 204, where all the cases are reviewed, and an attempt is made to reconcile them. See *post*, p. 241. A mere representation made at the time of the making of the charter-party as to the ship's position, and which is described as such on the pleadings, cannot, of course, be insisted upon as a warranty. *Elliot v. Von Glehn*, 13 Q. B. 632.

(*h*) *Oliver v. Fielden*, 4 Exch. 185. Where a cargo of wheat was sold and described in the bought and sold note as "shipped per Mimbella as per bill of lading, dated September or October," it was held that the period of shipment did not amount to a condition, so as to entitle the buyer to rescind the contract

Where a plaintiff covenanted that his ship should sail on a voyage for Cadiz by the next wind, and the defendant covenanted that if the ship went the intended voyage and returned to the Downs the plaintiff should be paid so much for the voyage, and the voyage was performed without unreasonable delay, although the ship did not sail with the next wind, it was held that the plaintiff was entitled to recover (i). So, where it was covenanted by a charter-party that the vessel should proceed with the first convoy from England for Spain or Portugal, and the master proceeded with an outward cargo to Lisbon, and brought home and delivered a return cargo to the freighter in London, it was held that the object of the contract was the performance of the voyage, that the stipulation about sailing with the first convoy was not a condition precedent, and that the freight for the voyage actually performed was recoverable (k). And where the owner covenanted that he would make the ship tight and strong for the voyage and keep her so, and the freighter took the ship into his service and used her for some time, it was held, that he could not insist that this covenant was a condition precedent and resist the payment of freight on the ground of its not having been performed (l).

In another case, in which the merchant agreed to load a complete cargo, and to despatch the ship in time to join a convoy that should sail for England on a particular day, and the convoy sailed on an earlier day, Lord Ellenborough ruled at *Nisi Prius* that the covenant must receive a reasonable construction, and that the master was not bound to wait until the day mentioned, there having been sufficient time to load before the day on which the convoy actually sailed (m).

In a later case in the Queen's Bench, where a charter-party provided that the ship, "being tight, staunch and strong, and every way fitted for the voyage," should load a cargo at Sunderland and therewith proceed to Constantinople, and that a portion

on its appearing that the wheat had been shipped at another time. *Gattorno v. Adams*, 12 C. B., N. S. 560.

(i) *Constable v. Clobertie*, Palmer, 397. See also *Bornmann v. Tooke*, 1 Camp. 377.

(k) *Davidson v. Gwynne*, 12 East, 381.

(l) *Havelock v. Geddes*, 10 East, 555; see also *Clipham v. Fertue*, 5 Q. B. 265. It will be observed that these cases proceeded to some extent, on the ground that there had been a beneficial

performance of part of the contract. See *post*, p. 272.

(m) *Thompson v. Inglis*, 3 Camp. 428. Where the freight was to be paid on the right delivery of the cargo at a particular port, and the delivery was prevented by a hostile occupation of this port, it was held that the event on which the freight was made payable had not happened. See *Liddard v. Lopes*, 10 East, 526, and the cases cited *post*, p. 269.

of the freight should be advanced on the ship having sailed, it was held, that the sailing of the ship in a seaworthy condition was made by the charter-party a condition precedent to the payment of the freight; and consequently that to an action for a portion of the freight it was a good plea that at the commencement of the voyage the ship was not tight, staunch, &c., and that by reason thereof the ship and cargo were wholly lost (n). In a later case, however, in the Court of Exchequer, that Court was of opinion that the performance of the ordinary stipulation in a charter-party, that the vessel, "being tight, staunch and strong," &c., shall sail, did not constitute a condition precedent to the charterer's obligation to load (o).

Several of these decisions do not admit of being reconciled, and attention must now be called to two important modern cases, in the later of which the chief authorities on this question were reviewed.

It is necessary to state the leading facts of the first of these cases in some detail. It was an appeal to the Privy Council; and it appeared that a ship had been described in a charter-party made at Malta, as "coppered A 1, of Malta, and now at anchor in this port;" and that it had been agreed by the charter that she should with all convenient speed proceed in ballast to Alexandria, and there load a cargo of grain or other lawful merchandize for the charterers. At the time of the making of the charter-party the ship was not, in fact, at anchor in the port mentioned, or indeed afloat, but was in a dry dock being coppered, and more than a month occurred before she was ready to sail. She was then detained for two days more at

(n) *Thompson v. Gillespy*, 5 E. & B. 209; *Graves v. Legg*, 9 Exch. 709; *Roberts v. Brett*, 18 C. B. 561; *S. C.* in error, 6 C. B., N. S. 811, *Sharp v. Gibbs*, 1 H. & N. 801, *Hudson v. Bilton*, 6 E. & B. 565, *Hoare v. Rennie*, 5 H. & N. 19, and *Beuillon v. Lupton*, 16 C. B., N. S. 113, are also modern cases in which questions as to conditions precedent have been discussed. The judgment of Lord Ellenborough in *Lyon v. Mells*, 5 East, 428, is consistent with the decision in *Thompson v. Gillespy*. See also *Shower v. Cudmore*, Sir T. Jones, 216.

(o) *Tarrabochia v. Hickie*, 1 H. & N. 183; "unless" it is said in the marginal note to this case "by the breach of such stipulations the object of the voyage is wholly frustrated." Probably this means

"unless the stipulation be of such a nature that the breach of it will frustrate the object of the voyage," for the character of the stipulation as a condition precedent, or not, cannot depend upon a subsequent event. In this case the Court was of opinion, that the sailing with convenient speed or in a reasonable time, was not a condition precedent. There is no doubt, however, that even in the absence of an express agreement as to time, it is an implied stipulation in all charters, the breach of which would form the ground of a cross action, that there shall be no unreasonable or unusual delay in the commencement of the voyage. See *M^r Andrew v. Adams*, 1 Bing. N. C. 29.

Malta, and afterwards sailed for and reached Alexandria, about twelve days later. About a fortnight after the making of the charter, the agent of the charterer at Alexandria (who had been advised of the making of the charter, and to whom the instrument had been sent) had ceded to a third person residing there all the interest of the charterer under the contract. This was done by an instrument of cession made without the privity of the shipowners or the master. The rates of freight had fallen at Alexandria between the date of the charter-party and the making of the cession, and afterwards fell still more. A few days before the ship left Malta, the cessionary had complained by proceedings in the chancery of one of the Consulates at Alexandria against the charterer's agent, alleging that the vessel had, contrary to the terms of the charter, not then left Malta. A few days after this, and three days before the ship left Malta, the charterer had entered a protest in the Commercial Court there against the master and shipowners, alleging that he had then just discovered that the vessel was still at Malta, and claiming for all damages that might be caused by her delayed departure. When the ship reached Alexandria, the master wrote to the charterer's agent there, applying for a cargo. The agent forwarded the letter to the charterer's cessionary, who wrote back to him in answer, that the "immense delay" had destroyed the cession. During the running of the lay days much discussion and several legal proceedings took place between the charterer's agent and the cessionary with reference to the cession, and the former stated to the master that the cessionary was the possessor of the charter-party, and was to be looked on as the agent of the charterer. During these discussions an offer was made to the master by the cessionary to provide a cargo, if the indemnity which he claimed for the delay at Malta was settled. This offer was not accepted, and no cargo was found by either the cessionary or by the charterer's Alexandrian agent, and after the expiration of the lay days the ship sailed from that port with a small cargo obtained from other persons. Proceedings were thereupon taken in the Courts of Malta by the shipowners against the charterer, claiming damages under the charter-party. In the result the Royal Court of Appeal at Malta recognized the cession, commented on the delay, and dismissed the claim of the shipowners. Upon appeal to the Privy Council this judgment was reversed.

That Court was of opinion that no importance ought to be attached to the cession; that it was unnecessary to determine whether the completion of the coppering of the vessel was a condition precedent or not to the maintaining of an action on the charter-party, as this stipulation had reference to the time of the sailing and not to the date of the charter, and that the words, "now at anchor in this port," although they referred to the time of the execution of the charter, ought not to be construed as a condition precedent, as it would be "unreasonable to make the whole force of the instrument depend on a literal compliance with this unimportant stipulation." "If, indeed," the Court added, "by the failure in this respect of the shipowner, the object of the charter-party had been frustrated, a different conclusion might have been proper." Upon the more important question as to the effect of the stipulation that the ship was to sail "with all convenient speed," the Court observed, that the parties had not expressly stated for themselves, in the charter-party, that unless the vessel sailed by a specified day, the charter-party should be at an end, that the Courts should be slow to make such a stipulation for them, that it was to be presumed that the charterer living at Malta knew of the delay in the completion of the vessel, and of the time when she was ultimately in a condition to sail, and that, if so, it would have been easy and just for him to give notice to the shipowner that he intended to insist that the charter was no longer binding. The Court further remarked, that as the freights had fallen at Alexandria, even before the date of the cession, there was no evidence that the charterer might not have procured freight when the ship actually arrived at that port at as good a rate as that at which it might have been procured on the day when, according to his own calculations, the ship ought to have arrived, and that the object of the charter was frustrated not by any delay such as the charterer had a right to complain of, but by the fall in the rate of freight (*p*).

It is obvious that, in this case, the Court took into consideration the whole of the circumstances affecting the claim of the shipowners, and rather decided that, looking at all the facts, the delay could not be set up in answer to the shipowner's claim, than that the stipulation in the charter-party as to the

ship's position was not a condition precedent. If this be not a correct view of the decision, it is impossible to reconcile it with the later case as dealt with in the Exchequer Chamber.

This case (*q*) was an action brought in the Court of Queen's Bench against a charterer for not loading a ship. It appeared that it had been agreed by a charter-party made in London, that the plaintiff's ship, "the Martaban," being "tight, staunch, and strong, and every way fitted for the voyage," should proceed with all possible speed to Newport, Monmouthshire, and there load a cargo of coals and proceed to Hong Kong. The plaintiff was described in the charter-party as "the owner of the good ship, called the 'Martaban,' now in the port of Amsterdam." At the time when the charter was made, the ship was distant from the port of Amsterdam about sixty-two miles, and did not reach that port until four days after the date of the charter. She then discharged her cargo with all possible despatch at Amsterdam, and proceeded at once to Newport where the charterer refused to load a cargo. The Court of Queen's Bench was of opinion, upon these facts, that the words "now in the port of Amsterdam," did not amount to a warranty; and, consequently, that it was not a condition precedent to the charterer's liability that the ship should have been at that port at the time of the charter. This decision was, however, reversed in the Exchequer Chamber, where it was held that the words in question imported a warranty, and that, as the ship was elsewhere at the time of the making of the charter, the defendant was justified in saying that there had been a failure in the performance of a condition precedent, and in refusing altogether to carry out the contract (*r*).

(*q*) *Behn v. Burness*, 1 B. & S. 877; *S. C.*, in Cam. Scacc. 32 L. J., Q. B. 204. The opinion formed in this case by the Court of Queen's Bench (from which Mr. Justice Wightman dissented) was intended to be founded upon *Dimech v. Corlett*, *ubi supra*; and the following observations were made in that Court by Cockburn, C. J., with reference to the unsatisfactory state of the decisions:—"I own, if this question were *res integra*, I should be much disposed to think that the best mode of construing these charters, where there is a representation as to the place of a ship, or as to the time of sailing, or analogous matter, would be to hold, that if the fact represented turns out not to be correctly stated, and

in consequence of it the charterer finds himself in a position where his speculation and enterprise may be frustrated and the contemplated advantages of them converted into disaster and loss, that should justify him in repudiating the contract. But, on the other hand, where the representation is that the ship is at a given place, or is to sail on a given day, &c., and it turns out that she was not there, or could not sail for some short time after that specified, &c., and there is no real frustration of the objects of the charterer, and little or no damage has been done to him, he should be left to his action."

(*r*) *Behn v. Burness*, in Cam. Scacc., *ubi supra*. In this judgment the Exchequer

Where, by the charter-party, freight is to be paid "subject to insurance," this does not amount to a condition precedent to

Chamber examined the earlier authorities and made the following observations, which have so important a bearing upon a question of frequent occurrence that they are inserted at length. "Properly speaking," said the Court, "a representation is a statement or assertion made by one party to the other, before or at the time of the contract, of some matter or circumstance relating to it. Although it is sometimes contained in a written instrument, it is not an integral part of the contract, and consequently the contract is not broken, although the representation proves to be untrue. . . . Although representations are not usually contained in the written instrument of contract, yet they sometimes are, but it is plain that their insertion therein cannot alter their nature. A question, however, may arise, whether a descriptive statement in a written instrument is a mere representation, or whether it is a substantive part of the contract. This is a question of construction, which the Court and not the jury must determine. If the Court should come to the conclusion that such a statement was intended to be a substantive part of the contract, and not a mere representation, the often-discussed question may be raised, whether this part of the contract is a condition precedent, or only an independent agreement a breach of which will not justify a repudiation of the contract, but can only be a cause of action for compensation in damages. In the construction of charter-parties this question has often been raised with reference to stipulations that some future thing should be done or shall happen, and has given rise to many nice distinctions. Thus, a statement that a vessel is to sail, or to be ready to receive cargo on or before a given day, has been held to be a condition—see *Glaholm v. Hays*, 2 M. & Gr. 257, *Oliver v. Fielden*, 4 Exch. 135, *Crookewit v. Fletcher*, 1 H. & N. 893, and *Seeger v. Duthie*, 8 C. B., N. S. 45, —while a stipulation that she shall sail with all convenient speed, or within a reasonable time, has been held to be only an agreement—see *Tarrabochia v. Hickie*, 1 H. & N. 183; *Dimech v. Corlett*, 12 Moo. P. C. C. 199; see also *Clipsham v. Vertue*, 5 Q. B. 265. But with respect to statements in a contract, descriptive of the subject-matter of it, or of some material incident thereof, the true doctrine established by principle, as well

as by authority, appears to be, generally speaking, that if such descriptive statement was intended to be a substantive part of the contract, it is to be regarded as a warranty, that is to say, a condition, on the failure or non-performance of which the other party may, if he be so minded, repudiate the contract in toto, and so be relieved from performing his part of it, provided it has not been partially executed in his favour. If, indeed, he has received the whole, or any substantial part, of the consideration for the promise on his part, the warranty loses the character of a condition, or, to speak more properly, perhaps, ceases to be available as a condition, and becomes a warranty in the narrow sense of the word, namely, a stipulation by way of agreement for the breach of which a compensation must be sought in damages—see *Ellen v. Topp*, 6 Exch. 424, *Graves v. Legg*, 9 Exch. 709, adopting the observations of Williams, Serjt. on the case of *Boone v. Egge* (1 Wms. Saund. 320 d); see also *Elliot v. Von Glehn*, 13 Q. B. 632. . . . In the present case, as the defendant has not received any benefit or advantage under the contract, but has wholly repudiated it, the question is simply, whether, in the true construction of the charter-party, the Court ought to infer that the statement as to the ship being at that date in the port of Amsterdam was meant to be a substantive part of the contract, or a representation collateral to it. . . . It is plain that the Court must be influenced in the construction not only by the language of the instrument, but also by the circumstances under which, and the purposes for which, the charter-party was entered into. For instance, if it was made in the time of war, the national character of the vessel is of such importance that a statement of it in the charter-party might properly be regarded as part of the shipowner's contract, and so amounting to a warranty. Whereas the very same statement in the time of peace, being wholly unimportant, might well be construed to be a mere representation. So, if it were shown that the charter-party was made for a purpose, such that unless the vessel began her voyage from the port of loading, with a cargo on board by a certain time, it was manifest that the object of the charter-party would in all probability be frustrated, the Court might properly be

the recovery of the freight, but merely means that the premiums of insurance are to be deducted from the freight (s).

Contracts of affreightment may, like any other contracts, be dissolved by the consent of the parties; and at any time before breach it is not necessary that there should be any new consideration for the dissolution (t). It is, however, a rule of law, Dissolution
of contract.

By act of parties.

led by these circumstances to conclude that a statement as to the locality of the ship, coupled with the stipulation, that she should sail with all convenient speed, was a warranty of her then locality. But we feel a difficulty in acceding to the suggestion that appears to have been, to some extent, sanctioned by high authority—see *Dimech v. Corlett*, that a statement of this kind in a charter-party, which may be regarded as a mere representation if the object of the charter-party be still practicable, may be construed as a warranty if that object turns out to be frustrated, because the instrument, it should seem, ought to be construed with reference to the intention of the parties at the time it was made, irrespective of the events which may afterwards occur. . . . The question on the present charter-party is confined to the statement of a definite fact, the place of the ship at the date of the contract. Now the place of the ship at the date of the contract, when the ship is in foreign parts and is chartered to come to England, may be the only datum on which the charterer can found his calculations of the time of the ship arriving at the port of loading. A statement is more or less important in proportion as the object of the contract more or less depends upon it. For in most charters, considering winds, markets, and dependent contracts, the time of a ship's arrival to load is an essential fact for the interest of the charterer. In the ordinary course of charters in general it would be so. The evidence for the defendant shows it to be actually so in this case. Then if the statement of the place of the ship is a substantial part of the contract, it seems to us that we ought to hold it to be a condition upon the principles above explained, unless we can find in the contract itself, or the surrounding circumstances, reason for thinking that the parties did not so intend. If it was a condition, and not performed, it follows that the obliga-

tion of the charterer dependent thereon ceased at his option; and considerations either of the damage to him, or of proximity to performance on the part of the shipowner, are irrelevant." The Court, after referring again to *Glaholm v. Hays*, and *Ollive v. Booker*, proceeded as follows:—"We think these cases well decided, and that they govern the present case. We think that the decision of *Dimech v. Corlett* does not conflict with them, because it is immersed in the specific facts there set out, so as to be a precedent only for cases of very analogous specific facts. The statement in that charter, that the ship was 'now at anchor in this port' (Malta) did not avail to release the charterer, because the ship was in the port in the dry dock, although the statement of the fact that she was at anchor in the port was definite, and indicated that she was ready for sea, while in truth she was in a dry dock being built, and was not completed for a month; yet as the defendant was at Malta, and was presumed to have known the state of the ship, and also to have known of the delay, and did not insist that the charter-party was broken, but allowed the ship to sail from Malta to Alexandria without objection, his defence on this point failed." Whatever may be thought of the attempt in this judgment to reconcile the decision with *Dimech v. Corlett*, or of the view taken in it of the conduct of the charterer in the last-mentioned case, it is clear that the reasoning upon which the judgment is founded is far more satisfactory than that which is to be found in some of the earlier cases, where the Courts have construed charter-parties rather with reference to the presumed hardship of certain interpretations, than with regard to the language used by the parties.

(s) *Jackson v. Isaacson*, 3 H. & N. 405.

(t) *King v. Gillett*, 7 M. & W. 55; see also *Viner's Abridg. Contract*, G. 17. The charterer's foreign agent has no

that if the original contract is under seal, the contract of dissolution must be also of the same description (*u*). Contracts which are not by deed, but which by reason of the operation of the Statute of Frauds must be in writing, cannot be varied, but may, it would seem, be *wholly discharged* by a merely verbal agreement (*x*).

It is an important general rule, of very frequent application, that where a party by his own contract creates a duty or charge, he is bound to perform it notwithstanding inevitable accident, since he might have provided against the contingency by the contract; but it is otherwise with respect to duties or charges which are imposed upon a person by the law (*y*).

Delay.

We have already seen what effect an unreasonable delay in the commencement of the voyage, resulting from the act of the shipowner or of the master, will have upon the position of the charterer (*z*).

By act of law.

In addition to these general rules, which apply to all contracts, there are some peculiar cases in which contracts of affreightment have been held, upon equitable principles, to be dissolved by the occurrence of events which have rendered their performance unlawful or impossible, although nothing has been done by the parties themselves towards rescinding the contract.

By war, interdiction of commerce, &c.

Thus, it has been said, that if, after the making of the contract, the exportation of the articles which are to compose the cargo were prohibited by the law of this country, the contract would be considered to be dissolved, or, at all events, no damages could be recovered for its breach (*a*). And the breaking out of a war, or a local interdiction of commerce, arising subsequently to the making of the contract between the state to which the ship or cargo belongs and that to which it is destined, would

implied authority to vary the cargo designated in a charter-party, nor to alter the place of loading. *Sickens v. Irving*, 7 C. B., N. S. 165.

(*u*) 5 Rep. 26 a.

(*z*) See the judgment in *Goss v. Lord Nugent*, 5 B. & A. 65.

(*y*) *Paradine v. Jane*, Aleyn, 27; *Adams v. The Royal Mail Steam Packet Company*, 5 C. B., N. S. 492.

(*x*) See the cases cited *ante*, p. 94, note (*r*).

(*a*) See the judgment of Lord Ellenborough in *Barker v. Hodgson*, 3 M. & S. 270. A prohibition at the port of discharge by a foreign government would not have this effect. See *Blight v. Page*, cited 3 B. & P. 295, note (*a*), and *Touteng v. Hubbard*, *ib.* 291.

have the same effect (*b*). But it is otherwise with respect to By embargo. an embargo, which operates only as a temporary suspension of commerce, and such an impediment cannot be set up in answer to the breach of a contract which has not provided against the contingency (*c*). And where an embargo was laid by the British Government upon foreign ships, as an act in the nature of reprisals and of partial hostility, it was held that no right of action could be founded in our Courts, by an owner of one of the foreign vessels against an English merchant, for a breach of contract which resulted only from his obedience to the orders of his own government (*d*).

During the late war with Russia, some important questions arose with reference to the effect of war on contracts of this description. In a case in the Court of Exchequer, it appeared on the pleadings that the plaintiff had agreed, at the request of the defendants, to execute an order for goods required by a merchant at Odessa, and that the defendants had for certain considerations undertaken to accept the plaintiff's draft for the invoice price of the goods. To a declaration setting out these facts, and alleging that the defendants had not accepted the plaintiff's draft, the defendants pleaded that at the time of the making of the agreement the merchant at Odessa was an alien, and that afterwards, before any breach of it, and before the time when the plaintiff was to have despatched the goods to him, he became and still was an enemy of the Queen, so that the plaintiff could not lawfully forward the goods to him. To this plea the plaintiff replied that in the declaration of war against Russia the Queen had waived the right of seizing enemy's property laden on board of neutral vessels, unless it was contraband of war, and that, by a subsequent order in council, six weeks from the declaration of war had been allowed to Russian merchant ships in ports in the Queen's dominions for loading their cargoes and departing, and that the goods in question were not contraband of war, and might before the expiration of the six weeks have been shipped on board a ship under the order in council. Upon a demurrer to this replication, it was held that

(*b*) See Abbott on Ship. 596.

(*c*) *Hadley v. Clarke*, 8 T. R. 259. In this case the contract was considered to be suspended until the embargo was removed. See also *Scott v. Libbey*, 2 Johns (American) Rep. 336. In *Pul-*

ler v. Staniforth, 11 East, 232, and *Bell v. Puller*, 2 Taunt. 285, the charter-parties expressly provided for cases of interference with the contract by political circumstances.

(*d*) *Touteng v. Hubbard*, 3 B. & P. 291.

the plaintiff was entitled to judgment, as, assuming that the declaration of war had made it illegal for the plaintiff to send the goods to an enemy, it appeared that they might have been shipped within the period allowed by the order in council (e). Some observations in this case threw a doubt upon the general doctrine that after a declaration of war all trading and commercial intercourse with the inhabitants of the enemy's country is absolutely illegal; but this decision proceeded, as will be seen, upon the ground that in that particular case the performance of the contract in question had been permitted by the very terms of the declaration of war, and the general doctrine mentioned above has been, after full consideration and argument, fully sanctioned by the Court of Exchequer Chamber in a recent case, and has also been recognized by the Court of Queen's Bench in some cases to which it is now necessary to refer shortly. In the first of these cases the question was raised on a demurrer in the Court of Queen's Bench, and afterwards carried to the Exchequer Chamber (f). It appeared that a ship owned by the plaintiff, a British subject, and in a British port, had been chartered to the defendant, also a British subject, to proceed to Odessa, and there load a cargo. By the charter, certain running days were to be allowed for loading and unloading, and demurrage was then to be paid at a fixed daily rate. The declaration alleged that the defendant had made default in loading, and had detained the ship on demurrage beyond the laying days. The plea stated that after the making of the charter-party, and before the arrival of the ship at Odessa, war had been declared against Russia, and that Odessa had been since a hostile port in the possession of the Queen's enemies, so that it was impossible for the defendant to perform his agreement, without dealing and trading with the Queen's enemies. The replication set up some orders in council, under which the plaintiff contended that the defendant would have been justified in loading the vessel, and to which it is not necessary to refer particularly, as it was held both by the Court of Queen's Bench and by the Exchequer Chamber that they could not be applied to the particular circumstances disclosed by the declaration. Upon this state of facts the Court

(e) *Clemontson v. Blessing*, 11 Exch. 135. See also the authorities collected and commented on in the note to that

case. *Ib.* 141.

(f) *Esposito v. Bowden*, 4 E. & B. 963; 7 E. & B. 763.

of Queen's Bench was of opinion that the plea was not sufficient, since it did not show that it was impossible for the defendant lawfully to perform his contract, for he might have bought a cargo before notice of the declaration of war, or have even bought one afterwards from British subjects at Odessa, in either of which cases it would have been lawful to load the ship after notice of the declaration of war. This reasoning was not, however, adopted by the Court of Exchequer Chamber, which reversed the judgment below, and laid down very distinctly, and in accordance with the older decisions, that the object of war, being as much to cripple the enemy's commerce as to capture his property, a declaration of war imports a prohibition of all commercial intercourse and correspondence with the inhabitants of the enemy's country, and that all such intercourse is illegal, except with the licence of the Crown (*g*). With reference to the grounds upon which the decision in the Court below had been rested, the Judges of the Exchequer Chamber were of opinion that the plea was good, as showing a dissolution of the contract, and an impossibility of legally performing it, since the shipment of a cargo from an enemy's port, even in a neutral vessel, was *prima facie* illegal, and if any peculiar circumstances existed, which made such a shipment legal, it lay on the plaintiff to allege these facts. Another question of a similar kind arose in the Court of Queen's Bench, soon after the last-mentioned case had been decided in that Court, but before its decision had been reversed in a Court of Error. In this case (*h*) the declaration was framed upon a charter-party between the plaintiff and the defendant, by which the defendant agreed to load a cargo on board the plaintiff's ship at Odessa, and it alleged that the defendant has made default. The plea stated that before the breach of contract war had been declared by England against Russia, and had since existed, of which both the plaintiff and the defendant had notice before any breach; that both the plaintiff and the defendant were British subjects, and the ship was a British registered ship; that Odessa was part of the Russian Empire, and that no licence from the Queen could be obtained for loading the ship, and that *the defendant could not have procured a cargo or loaded the ship without trading or cor-*

(*g*) *Esposito v. Bowden*, 7 E. & B. 763.

(*h*) *Reid v. Hoskins*, 4 E. & B. 979; this case after the trial of the issue in fact, 5 E. & B. 729.

6 E. & B. 953. See also the report of

responding with the enemy. The Court of Queen's Bench held, under these circumstances, that the contract was dissolved before any breach of it by the defendant, and that he was entitled to judgment. The Court stated that it was material that the owners of the ship were alleged to be British, (since it was, on this account, the duty of the captain to make his escape from Odessa as soon as he heard of the declaration of war,) and it distinguished this case from the earlier decision, on the ground that the plea contained an averment negating the supposition that the defendant, before the declaration of war, could have provided a cargo from Russian subjects, or, after the declaration of war, could have loaded the vessel without trading with the enemy; an averment which, as we have seen, was not (according to the view afterwards taken by the Exchequer Chamber (i)) in any way necessary. Another recent case in the Court of Queen's Bench gave rise to some questions relating to this subject. In this case (k) the defendant contracted with the plaintiff, by charter-party, to load on board a ship of the plaintiff a cargo, at Odessa, at a certain rate of freight. The plaintiff's ship was to proceed from a British port to Constantinople, and thence to Odessa, and it was agreed that if before the ship arrived at Constantinople "war had commenced," the cargo was to be loaded at a reduced rate. It appeared that, in fact, before the ship had arrived at Constantinople war had been declared between Russia and Turkey, but not between England and Russia. The Court held, under these circumstances, that the contingency contemplated by the charter-party was war between Russia, the state in possession of the port of loading, and England, and this not having occurred before the arrival of the ship at Constantinople, that the contingency upon which the freight was to be reduced had not happened. In the same case it appeared that another charter-party had been entered into between the same parties, by which the defendant had agreed to load another ship of the plaintiff at Odessa. To a declaration complaining that the defendant had not loaded the vessel, and alleging that the ship had waited at Odessa during some of the laying days, and that then the defendant had dispensed with her remaining for the residue of them, and requested

(i) See the judgment in *Esposito v. Bowden*, 7 E. & B. 763. 6 E. & B. 953. See also *Barrick v. Buba*, 2 C. B., N. S. 563.

(k) *Avery v. Bowden*, 5 E. & B. 714;

her to depart, it was pleaded, among other pleas, that before the causes of action accrued war had been declared between England and Russia, whereby the performance of the agreement had been prevented, and the contract had been rescinded. It appeared on the evidence, that before the declaration of war the agent of the defendant at Odessa had repeatedly told the master that there was no cargo for the ship, and that she had better go away, but it was also proved that the master continued to require a cargo until the time at which the declaration of war between England and Russia had been known at Odessa, which time was before the expiration of the ship's laying days. Upon these facts the Court held that the plea was proved, that there was no evidence that the defendant had broken the charter-party by absolutely refusing to provide a cargo, and that even if the language used by the agent of the defendant had been stronger, this could not have been treated as a renunciation of the contract by the defendant, after the captain had continued, up to the declaration of war, to insist upon a cargo in fulfilment of the charter-party. And the principles upon which the latter portion of this decision proceeded were acted upon by the Court in a later case (1). It must be observed, however, that it has been distinctly laid down in a recent case, that where there is an explicit renunciation of a contract by the person bound to perform it, and this declaration is accepted by the other contracting party as a breach of the contract, a cause of action immediately arises, even although the time for performance may not have arrived (m).

Where, owing to the prevalence of an infectious disease at the port of discharge, all public communication with the shore became unlawful and impracticable, it was held that the loss must fall on the freighter, and that he was liable in damages for not performing his contract (n). But where by the charter-party a certain number of running days were to be allowed to the merchant for loading the vessel, and also ten days over and above on demurrage at a certain rate, and the vessel was frozen in during the progress of the loading, and detained by the ice a considerable time after the loading was completed, it was held

(1) *Reid v. Hoskins*, 5 E. & B. 729.

(m) *The Danube and Black Sea Railway Company v. Xenos*, 11 C. B., N. S. 152; *S. C.* in Cam. Scacc. 31 L. J., C. P. 284.

(n) See *Barker v. Hodgson*, 3 M. & S. 270, and the pleadings in that case. The French law is otherwise. *Encyclopédie du Droit*, vol. 3, p. 617, tit. *Charte Partie*.

that the freighter was only bound to pay demurrage during the time of loading, and that as the subsequent detention was not by any fault of his he was not responsible for it (*o*). In another case it was held that a shipowner was not discharged from his liability to complete the voyage, and to take his ship to a port up the Danube at which it was by the charter-party agreed that a cargo should be laden, by reason of a want of water at the mouth of the river which lasted two months, even although the charter provided that the ship should proceed to the port of loading, "or as near thereunto as she might safely get," and contained the ordinary exception as to perils of the seas; and although it also appeared that it would not have been safe for the ship to lie during the latter of the two months off the mouth of the Danube (*p*).

By blockade.

Questions have also arisen as to the effect on the contract of affreightment of a blockade. It is illegal to attempt to enter a blockaded port in violation of the blockade; and, after a public notification of it, the act of sailing to that port, with the intention of violating the blockade, is in itself illegal (*q*). And it is now well settled, that in cases of violation of blockade the master must be treated as the agent of the owner of the cargo, as well as of the ship, and that consequently the cargo owners cannot protect their property from capture in respect of the violation of a blockade, by showing that they were wholly innocent of the intention to violate it (*r*). This rule is not applicable exclusively to neutrals, but applies with equal force to all persons attempting to violate a blockade, although they may be subjects or allies of the country which has established it (*s*). Where a public notice of a blockade has been given to the Government of a country, all parties contracting there must be taken to have entered into their contracts with an equal knowledge of its existence; any difficulty or impediment caused by the blockade cannot, therefore, be set up as a dissolution of the contracts, or as an excuse for their non-performance (*t*).

(*o*) *Pringle v. Mollett*, 6 M. & W. 80.

(*p*) *Schilizzi v. Derry*, 4 E. & B. 873. See also *Kearon v. Pearson*, 7 H. & N. 386; *Parker v. Winlow*, 7 E. & B. 942; and *Bastifell v. Lloyd*, 1 H. & C. 388.

(*q*) *The Neptunus*, 2 Rob. 110. See also the judgments in *The Tutela*, 6 Rob. 180, and *Naylor v. Taylor*, 9 B. & C. 723. A ship which has entered a blockaded port before the blockade is entitled

to come out again. See as to this, and as to the general principles regulating the law of blockade, the judgment of the Privy Council in *Cremidi v. Powell*, 11 Moo. P. C. C. 88.

(*r*) *Baltazzi v. Ryder*, 12 Moo. P. C. C. 168.

(*s*) *Ib.*

(*t*) *The Adelaide*, 2 Rob. 111, note (*a*); *Madeiras v. Illil*, 8 Bing. 231.

Where the port of destination is blockaded, the master is not under ordinary circumstances bound to proceed and to endeavour to perform the terms of a charter-party which was entered into before he had any knowledge of the blockade (*u*). And a well-founded fear of capture may justify a master in refusing to leave a port and perform a contract previously entered into (*x*).

The shipowner's contract is not dissolved, nor is it any excuse for its non-performance, that the delivery of the goods to the consignee is prevented by their wrongful seizure by Custom House officers (*y*). But where a ship is, by a charter-party, to proceed to "a safe port" to be named by the charterers, they are not entitled to name a port, by nature safe, but then closed by the local Government, so that any vessel entering it without a permit, would be liable to confiscation (*z*).

Having considered the principal rules by which the contract of charter-party is governed, it will be convenient to mention shortly the ordinary remedies for any breach of this contract, and the proper parties to sue and be sued in respect of it, postponing the subject of freight to a later part of this Chapter.

Ordinary remedies on contract.

The proper remedy upon a charter-party, if it be under seal, is an action of covenant, or of debt. If it be not under seal the action should be on promises (*a*). But, generally speaking, *assumpsit* will not lie where there is a higher remedy in respect of the same cause of action. Thus, the ordinary remedy of the owners in *assumpsit* for freight was held to be lost, where the master had, as their agent, entered into a charter-party under seal (*b*). And it was held that an action on promises could not be maintained by the freighters on the bills of lading where the shipowners had also contracted with them by charter-party under seal (*c*).

(*) See the judgment of Sir W. Scott in *The Tutela*, 6 Rob. 181. In America it has been held, that by a blockade of the port of discharge, or an interdiction of commerce with it after the commencement of the voyage, the contract of charter-party is dissolved. See *Scott v. Libbey*, 2 Johns (American) Rep. 336; and see also, as to the law of blockade, *The Francis Lin*, 10 Moore, 87; *The Johanna Maria*, *ib.* 70.

(z) *Pole v. Cetovich*, 9 C. B., N. S. 430.

(y) *Gosling v. Higgins*, 1 Camp. 451;

Spence v. Chodwick, 10 Q. B. 517; and see also, as to the effect on the contract of the interference of the agents of the English government at a foreign port, *Evans v. Hutton*, 4 M. & Gr. 954.

(x) *Ogden v. Graham*, 1 B. & S. 773.

(a) Since the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76), no form of action need be mentioned in the writ, and all distinctions, save substantial ones, between the different forms of action, have ceased to exist.

(b) *Shack v. Anthony*, 1 M. & S. 573.

(c) *Hunter v. Prinsep*, 10 East, 378.

Where the performance of the terms of a contract which is not in the form of a bond is secured by a penalty, the general rule is that damages beyond the penalty may be recovered (*d*).

Parties to sue
and be sued.

Charter-parties are very frequently executed by agents. Where they are not under seal the ordinary rules as to the parties to sue and be sued on such contracts are applicable.

In cases of
agency.

Where no difficulty is created by any special description of the parties in the contract, and it is made in the name of a person who is really an agent, evidence is admissible, even although he is not described as an agent, to show the existence of the agency, so as to give the benefit of the contract to the unnamed principal, or to charge him with the liability on it; but the agent cannot get rid of his liability on a contract which he has executed in this form, by showing that he was merely an agent in the transaction (*e*). And where in a charter-party an agent described himself as "owner of the ship," it was held that the real principal could not sue upon it (*f*). But where the real principal described himself in the charter-party as an agent, and there was a stipulation that he was not to be personally liable, it was held that he might sue as principal, and that this stipulation only applied to him in his description or character of agent (*g*). In a case in which a person was described in a charter-party as an agent, but signed it without any qualification, it was held that he was personally liable (*h*). Where a charter-party, mentioning demurrage, was made between the shipowners and an agent for the freighters (no principal being named), and at the end of the charter it was stated that "the charter being concluded by A. B. (the agent) for another party, the liability of the former in every respect, and as to all matters and things, as well before as after the shipping of the said cargo, shall cease as soon as they have shipped the cargo;" it was held, that no action could be brought against the agent for demurrage at the port of discharge (*i*).

Where contract not under seal.

If a person, who has in fact no interest as principal, professes to act as agent for another, but without authority, and executes

(*d*) *Winter v. Trimmer*, 1 W. Bl. 395; *Harrison v. Wright*, 13 East, 343; *Maylam v. Norris*, 1 C. B. 244.

(*e*) *Higgins v. Senior*, 8 M. & W. 834.

(*f*) *Humble v. Hunter*, 12 Q. B. 310.

(*g*) *Schmalz v. Avery*, 16 Q. B. 655.

(*h*) *Parker v. Winlow*, 7 E. & B. 942.

(*i*) *Oglesby v. Yglesias*, E., B. & E. 930. See also *Milvain v. Perez*, 30 L. J., Q. B. 91.

a contract in the name of that other person, putting the name of the latter to the instrument and adding his own name as agent for the alleged principal, he cannot be treated as a party to the contract or be sued upon it unless he can be shown to be the real principal; the only remedy against him is an action for falsely assuming to act as agent (*k*). But in this case, as also in the case of a person describing himself in a written instrument as the agent of an unnamed principal, it is competent for the party with whom he contracts to show that although described as agent he is in fact the principal, and liable as such (*l*). Where a person signs a contract in his own name, he is *primâ facie* a contracting party, and to prevent this liability from attaching it must appear clearly from the other portions of the agreement that he did not intend to act as a principal (*m*); but where a contract describes a person as making it as agent on behalf of a named principal, the party so making the contract is not personally liable on the contract, whether the principal be resident in England or abroad (*n*). But he may be, and often will be, liable on the implied promise that he is what he represents himself to be, namely, an agent having authority to contract as agent (*o*). In all these cases the question depends upon the intention of the parties as discoverable from the contract itself (*p*). Where a charter-party was entered into by merchants in London, who were mentioned in the body of the charter as if they were contracting parties, and they signed the charter "by authority of and as agents for" a merchant at Memel, it held that they were, notwithstanding, personally liable on the contract (*q*).

In a later case, a question arose upon a plea setting up, as an equitable defence, the following facts to a declaration on a charter-party complaining of a refusal to load a cargo. The

(*k*) *Jenkins v. Hutchinson*, 13 Q. B. 744; see also on this point the earlier cases of *Jones v. Downman*, 4 Q. B. 235, note (*a*); *Downman v. Williams*, 7 Q. B. 103; and *Story on Agency*, s. 264.

(*l*) *Carr v. Jackson*, 7 Exch. 382.

(*m*) *Cooke v. Wilson*, 1 C. B., N. S. 153.

(*n*) *Green v. Kopke*, 18 C. B. 549; *Mahony v. Kekule*, 14 C. B. 390; *Deslandes v. Gregory*, 29 L. J., Q. B. 93, affirmed Cam. Scacc. 30 L. J., Q. B. 36. The fact, in these cases, that the principal is a foreigner is not, however, to be thrown entirely out of consideration. See the judgment in *Lennard v. Robinson*, 5 E. & B. 125.

(*o*) *Colten v. Wright*, 7 E. & B. 301;

8 *ib.* 647; *Randell v. Trimen*, 18 C. B. 786.

(*p*) See the cases cited in note (*n*). See also, as to when agents are personally liable on contracts, *Lewis v. Nicholson*, 18 Q. B. 503, *Tanner v. Christian*, 4 E. & B. 591; and *Parker v. Winlow*, 7 E. & B. 942. The rule with respect to the liability of an agent on a bill of exchange is more unfavourable to the agent than in ordinary cases, for he must expressly state that he acts only as agent, in order to protect himself. See *Mare v. Charles*, 5 E. & B. 978, and the judgment of the Exchequer Chamber in *Lindus v. Melrose*, 8 H. & N. 182.

(*q*) *Lennard v. Robinson*, *ubi supra*.

plea stated that the defendants had entered into the charter solely as agents for A. B. and Co.; that before they signed the charter, it was agreed and understood between them and the plaintiffs, that they were only to sign as such agents, so as to bind A. B. and Co., and not to make themselves liable as principals, and that they signed in the following manner:—"For A. B. and Co., of Messina, H. and Co. (the defendants), agents." The plea further stated, that the defendants and the plaintiffs *bonâ fide* believed at the time of signing the charter, that the defendants would not be liable personally on it, notwithstanding that it professed in the body of it to be made by the defendants as merchants and freighters; that the defendants had power to bind their principals, and that the latter were bound by the charter; and that the plaintiffs were inequitably taking advantage of the mistake in drawing up the charter, contrary to the real intention of the parties. This plea was held by the Court of Exchequer to show a good equitable defence, and the judgment was afterwards affirmed in the Exchequer Chamber (r).

Where contract by deed.

Where the contract is under seal different principles are applicable. An agent cannot bind his principal by deed unless he is authorized by deed to do so (s). And it is an established rule, that an act done under an authority under seal must be done in the name of the principal, and not in the name of the agent. No particular form of words is, however, necessary, so long as the act is done in the name of the principal (t). It is also a rule that if a deed be *inter partes*, that is to say, if it show on the face of it expressly who are the parties to it (as "between A. of the one part, and B. of the other part") no person not a party to it can sue on it, even although it appears to have been made for his advantage and contains an express covenant with him (u). This rule does not, however, interfere with the liability of a person who has executed a deed containing a covenant by him, although he be not named therein as a party (x); nor does it apply to agreements not under seal (y).;

(r) *Wake v. Harrop*, 6 H. & N. 768; S. C. in Cam. Scacc. 1 H. & C. 202. Some of the judges were of opinion that the plea disclosed a good defence even at law.

(s) *Horsley v. Rush*, cited 7 T. R. 209.

(t) *Combe's Case*, 9 Rep. 79; *Wilks v. Back*, 2 East, 144.

(u) 2 Inst. 673; 2 Roll. Ab. Faits,

F. 1; *Berkeley v. Hardy*, 5 B. & C. 355; and see the judgment in *Bushell v. Beavan*, 1 Bing. N. C. 120. This rule is now subject to the limitation, unimportant so far as relates to the matters mentioned in the text, introduced by the 8 & 9 Vict. c. 106, s. 6.

(x) *Salter v. Kidgley*, Carth. 76; S. C. Holt's R. 210.

(y) *Beckham v. Drake*, 9 M. & W. 79.

No action lies against the shipowners on a charter-party under seal executed by the master only; but the liability of the owners in respect of their general duties is not affected by the master having entered into a contract of this nature; they continue liable in *assumpsit*, or in *case*, for the breach of any duties which are not inconsistent with the stipulations of the charter-party. And this rule applies even although the master who executed the deed happens to be a part owner also, if this fact does not appear on the charter-party, and is not known to the freighters (*z*).

It must be recollected that neither in the case of deeds, nor in that of contracts not under seal, could there, by the common law, be a transfer of the contract so as to give a right of action in the name of the transferee (*a*). A statutory exception to this rule has been introduced in the case of bills of lading by the 18 & 19 Vict. c. 111, and will be presently considered.

We have already seen that the master has a special property in the vessel and may sue in his own name for freight on a contract to which he is a party (*b*). Right of master to sue.

Reserving the questions relating directly to the payment of freight to a later part of this Chapter, we proceed to consider, secondly, *the contract for the carriage of goods in a general ship, and the ordinary rights and liabilities resulting from it.*

CONVEYANCE
OF GOODS IN
A GENERAL
SHIP.

Where a ship is not chartered wholly to one person, but the owners offer her generally to carry the goods of any merchants who may choose to employ her, or where, if chartered to one merchant, he offers her to several sub-freighters for the conveyance of their goods, she is called a general ship. In these cases the contract entered into by and with the owners, or the master on their behalf, is evidenced by the bill of lading (*c*).

(*s*) *Leslie v. Wilson*, 3 B. & B. 171.

(*a*) *Splidt v. Bowles*, 10 East, 279; *Moore v. Hopper*, 2 N. R. 411.

(*b*) *Ante*, p. 82; *Shields v. Davis*, 6 Taunt. 65.

(*c*) The charterers are not bound, in the absence of custom or express contract, to hand over to the shipowners copies of the bills of lading of the goods put on board. *Dutton v. Powles*, 2 B. & S. 174; S. C. in Cam. Scacc. *ib.* 191. Cases may arise in which, owing to the

nature of the charter-party, the master in signing the bills of lading may act only as agent for the charterers, and not as agent for the shipowner. In such a case the shipowner would have no right to sue for the bill of lading freight. *Marquand v. Banner*, 6 E. & B. 232, was considered by the Court of Queen's Bench to be a case of this kind. It may, however, be doubted, whether this decision would have been upheld, if the question had been taken to a Court of Error.

BILL OF
LADING.General nature
of contract.

This is a document which is signed and delivered by the master to the shippers on the goods being shipped. In practice when goods are shipped an acknowledgment is given by the mate known as the "mate's receipt." This is afterwards exchanged by the captain or the broker of the ship for the bill of lading. Several parts, that is to say, copies of the bill of lading, are commonly made out; one or more of these is sent by the shipper of the goods to the person for whom they are intended, one is retained by the shipper himself, and another is kept by the master for his own guidance.

The following is the usual form of a bill of lading (d):—

Shipped in good order and well conditioned by [A. B. merchant] in and upon the good ship called [*The Good Intent*] whereof [C. D.] is master for this present voyage and now riding at anchor in the [*Port of Southampton*] and bound to [*Cadiz in Spain twenty cases of hardware and fifty bales of cotton goods*] being marked and numbered as in the margin and are to be delivered in the like good order and well conditioned at the aforesaid port [*of Cadiz*] *the act of God, the Queen's enemies, fire and all and every other dangers and accidents of the seas, rivers and navigation of whatever kind or nature soever excepted* unto [E. F. merchant] or to his assigns he or they paying freight for the said goods — per case and — per bale freight with primage and average accustomed. In witness whereof the master or purser of the said ship hath affirmed to [*five*] bills of lading all of this tenor and date one of which bills being accomplished the others to stand void.

Dated at Southampton the — day of—.

Stamps.

Every bill of lading for any goods, merchandize or effects to

See also the observations on this case in *Gilkison v. Middleton*, 2 C. B., N. S. 153—155; and *Kirchner v. Venus*, 12 Moo. P. C. C. 361.

(d) The form given in the text is that which is now ordinarily used on the shipment of goods in sailing vessels. In some bills of lading, however, a further limitation of the shipowner's liability is added by inserting among the exceptions "*restraints of princes or rulers*." In the case of steam vessels, it is now also usual to add to the exceptions the words "*accidents from ma-*

chinery, boilers, steam." The bills of lading used by the Peninsular and Oriental Steam Navigation Company except also "*detentions consequent upon the conveyance of her Majesty's mails*," and contain a provision that the company will not be answerable for leakage or breakage. See, as to such a provision, *Phillips v. Clark*, 2 C. B., N. S. 156. The form of a French bill of lading (*Connaissement*), and the law relating to it, will be found in the Code de Commerce, Arts. 281 to 285.

be exported or carried coastwise is liable to a sixpenny stamp (*e*); and any person who makes or signs any bill of lading engrossed, printed, or written, or partly engrossed or written and partly printed upon vellum, parchment, or paper not properly stamped, is liable to forfeit 50*l.* (*f*).

The rules of construction, which have been already mentioned, with reference to charter-parties are also applicable to bills of lading (*g*); but there are some peculiarities about this contract which must be mentioned in detail. Construction of contract.

The bill of lading is by the mercantile law a negotiable instrument, and by its indorsement the property in the goods to which it relates may be transferred, whether the indorsement is to a particular person, or in blank and accompanied by a delivery to the party to whom it is intended to pass the property (*h*). The actual holder of a bill of lading may also, although this is at variance with the general principles of law, transfer by indorsement a greater right than he himself has; and an insolvent vendee may defeat by a *bonâ fide* indorsement the right of the unpaid vendor to stop the goods *in transitu* (*i*). Effect of indorsement.

The important questions which arise as to the effect of the indorsement of bills of lading upon the rights of the vendor and vendee of goods will be considered in a later part of this Chapter (*k*). It is only necessary to add here, in describing the general character of the contract, that although formerly a bill of lading was not negotiable in the sense in which a bill of exchange is negotiable, since the indorsee could not maintain an action upon it in his own name (*l*), a material alteration has been made in this respect by a modern statute (the 18 & 19 Vict. c. 111) (*m*), which provides, that every consignee of goods named in a bill of lading, and every indorsee of a bill of lading

Under the 18
& 19 Vict.
c. 111.

(*e*) 5 & 6 Vict. c. 79, Schedule. As to Ireland, see the 5 & 6 Vict. c. 82, s. 34, which has been continued from time to time. See the 14 & 15 Vict. c. 18.

(*f*) 5 & 6 Vict. c. 79, s. 21.

(*g*) *Ante*, p. 230.

(*h*) See *Evans v. Marlett*, 1 Lord Raym. 271; *Lickbarrow v. Mason*, 2 T. R. 63; 1 H. Bl. 357; 6 East, 21, note; *Wright v. Campbell*, 4 Burr. 2046; *Hibbert v. Carter*, 1 T. R. 745; see also the notes to *Lickbarrow v. Mason*, 1 Smith,

L. C. 729, 5th ed.

(*i*) *Lickbarrow v. Mason*, *ubi supra*; and see the judgment of Tindal, C. J., in *Jenkyns v. Osborne*, 7 M. & Gr. 699.

(*k*) *Post*, Chap. VI., CONTRACT OF AFFREIGHTMENT, Part II.

(*l*) *Sanders v. Panzeller*, 4 Q. B. 260; *Thompson v. Dominy*, 14 M. & W. 403; *Howard v. Shepherd*, 9 C. B. 297. See also *Tindall v. Taylor*, 24 L. J., Q. B. 16.

(*m*) See s. 1. The right of stoppage in transitu is not affected by this provision. See s. 2.

to whom the property in the goods mentioned in it passes upon or by reason of the consignment or indorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of the goods as if the contract contained in the bill of lading had been made with himself. This statute has put an end to the great inconvenience which existed under the old system from the fact that the beneficial interest in the goods and the rights of action in respect of the carriage were in these cases vested in different persons. In a recent case goods had been shipped by the defendant on board the ship of the plaintiff, and a bill of lading had been signed by the master, stating that the goods had been shipped by the defendant as agent, and were to be delivered abroad "unto order or assigns, he or they paying freight for the goods." The goods had, in fact, been shipped on account of a third person, to whom, before the shipment, the shipowners had made advances, upon an undertaking that he would indorse to them as security a bill of lading of the goods, wherein freight should be payable by him in this country. The defendant indorsed the bill of lading to the person on whose account the goods had been shipped, who indorsed it to the shipowners, but did not pay the freight. It was held, under these circumstances, that the defendant was liable under the bill of lading to pay the freight to the shipowners, and that the 18 & 19 Vict. c. 111, did not vest the property in the goods in the shipowners or indorsees of the bill of lading, so as to deprive them of their right to sue the defendant for the freight (*n*). It has been also held, that an indorsee of a bill of lading, who has indorsed it over before the arrival of the vessel and delivery of the cargo, does not, under this statute, remain liable for the freight (*o*).

Ordinary exceptions in contract.

We have seen that the contract to carry the goods safely which is contained in the ordinary bill of lading is subject to several express exceptions. It is necessary to explain the meaning of these limitations of the shipowner's responsibility. This will appear from the following cases, some of which relate however to similar exceptions in contracts of charter-party.

It is a general rule in construing these exceptions, that the intention of the parties as expressed on the contract is to be

(*n*) *Fox v. Nott*, 6 H. & N. 630.

(*o*) *Smurthwaite v. Wilkins*, 11 C. B., N. S. 842.

looked to, for no exception (of a private nature, at least) which is not contained in the contract itself can be engrafted on it by implication as an excuse for its non-performance (*p*).

The first words of the ordinary exception are, "*the act of God and the Queen's enemies*." This is only the expression of a limitation of liability which existed already at common law in the case of all common carriers (*q*). The meaning of the first part of this exception is shown by the construction which has been put upon the common law limitation of the carrier's responsibility. Acts that could not happen by the intervention of man, such as storms, tempests and the like, are *acts of God* within its meaning (*r*). For instance, a loss caused by a sudden gust of wind is covered by these words (*s*); but not a loss by fire, which, although caused by no negligence on the part of the carrier, yet was not occasioned by lightning (*t*). And in a case, in which goods had been placed in a boat which was towed by a steamer, and the steamer stopped in the ordinary course pursued on the voyage, and the tide thereupon forced the boat against the steamer, so as to cause a leak, through which the goods were damaged, it was considered by the Court of Exchequer that the injury did not arise from the "act of God" (*u*). The words "*the Queen's enemies*" relate, not to robbers—for the consequences of whose attacks carriers are liable, unless their liability has been varied by statute, or express contract—but to the subjects of states at war with the British Crown (*x*).

Act of God
and the
Queen's ene-
mies.

Where the ship is so damaged as to be unable to proceed, but

Dangers of the
seas and navi-
gation.

(*p*) See the judgment of Lord Ellenborough in *Atkinson v. Ritchie*, 10 East, 533, and *Spence v. Chodwick*, 10 Q. B. 617.

(*q*) *Coggs v. Bernard*, 2 Ld. Raym. 909; *Dale v. Hall*, 1 Wils. 281; *The Proprietors of the Trent Navigation v. Wood*, 3 Esp. 127; *Laveroni v. Drury*, 8 Exch. 166.

(*r*) See the judgment of Lord Mansfield in *Forward v. Pittard*, 1 T. R. 33.

(*s*) *Amies v. Stevens*, 1 Str. 128; *Oakley v. The Portsmouth and Ryde Steam Packet Company*, 11 Exch. 618.

(*t*) *Forward v. Pittard*, 1 T. R. 27. This case shows the nature of the losses which are within the exception. In cases of fire, there is, in addition to the express exception in the bill of lading,

a particular statutory protection. See *ante*, p. 50.

(*u*) *Oakley v. The Portsmouth and Ryde Steam Packet Company*, *ubi supra*.

(*x*) It is curious that there is no express decision upon these words. It would seem that they do not include *pirates*. See Molloy, B. 1, c. 4, s. 3. The question is, however, practically unimportant, as most bills of lading and charter-parties contain an express exception of loss by pirates or robbers by sea; and it has been held, that such a loss is covered by the exception of *perils of the seas*. See 2 Roll. Ab. 248, pl. 10. As to the construction of the word *pirates*, in a policy of insurance, see *post*, Chap. VII., *INSURANCE*, Part I.

alteration by natural causes in the banks of a navigable river, or by the rising and falling of a vessel with the tide whilst moored in harbour in the ordinary course of her voyage, have also been held not to fall within the description of losses by sea perils (o).

Robbers and dangers of the roads.

In a case, in which the defendants undertook to convey some boxes of gold dust from the coast of the Pacific across the Isthmus of Panama to London, "the act of God, the Queen's enemies, robbers, fire, accidents from machinery, boilers, steam, dangers of the sea, roads, and rivers, of whatsoever nature or kind, excepted," the Court held that the word "robbers," looking at the other words with which it was associated, and to the nature of the transit, meant robbers by force, and that it did not protect the defendants from liability for the loss of one of the boxes which was stolen from a railway truck between Southampton and London. The Court said that the words "dangers of roads" might be explained by the context to refer to marine roads where vessels lie at anchor, but that even supposing them to extend to roads on land, they could apply to such dangers only as were immediately caused by the condition of the roads; such, for instance, as the overturning of carriages (p).

Restraint of princes.

Another exception which sometimes occurs in bills of lading, but more usually in charter-parties, is the "*restraint of princes and rulers*" (q).

Where by a charter-party the master was bound to proceed to St. Petersburg, and there to load from the freighter's factor a complete cargo, and the charter-party contained the usual exception of "restraint of princes and rulers during the voyage," it was held that, if this provision applied at all as an excuse for not loading a cargo, it meant an actual and operative restraint, and not merely an expected and contingent one; and, therefore, that the master was liable to the freighter, although his not having loaded a complete cargo proceeded from a *bonâ fide* and

(o) *Thompson v. Whitmore*, 3 Taunt. 227; *Smith v. Shepherd*, Abbott on Ship. 383; *Magnus v. Buttemer*, 11 C. B. 876.

(p) *De Rothschild v. The Royal Mail Steam Packet Company*, 7 Exch. 734.

(q) As to the meaning in a policy of

insurance of a warranty of freedom "from all consequences of hostilities, riots or commotions," see *Ionides v. The Universal Marine Insurance Company*, 14 C. B., N. S. 259, and *post*, Chap. VII., INSURANCE, Part II.

well-grounded apprehension that if he waited any longer an embargo would be laid upon the ship (*r*).

In a case in the Court of Queen's Bench, in which a charter-party contained, as is usual, the words "restraint of princes, &c. *during the said voyage*," it was held that the exception did not apply at the loading port, but only during the voyage (*s*). In a later case, however, which was in fact distinguishable from the previous decision, the restraint of the vessel having occurred at a port abroad at which the ship might be considered to be already on her voyage, the Court of Exchequer dissented from this view (*t*).

Where a passenger took a passage ticket from New York to Galway which contained the following condition, "the ship will not be accountable for luggage, goods, or other description of property, unless bills of lading have been signed therefor," and during the voyage the ship, through the master's negligence was lost, together with the passengers' luggage, it was held that the shipowners were protected by the above-mentioned condition from responsibility for this loss (*u*).

Finally, it is apprehended that even when the loss is occasioned by a cause within any one of these excepted perils, the shipowner may be often liable if there is gross negligence on his part; as, for instance, if the ship was unseaworthy, for in such cases there would be no remedy against the underwriters, and unless the shipowner were liable, the contract of carriage, taken together with the contract of insurance, would not afford a complete indemnity to the owner of the goods (*v*). And it is clear that the shipowner is liable if the damage to the goods is caused by his negligence, although there have been negligence on the part of the shipper, if the negligence of the shipowner is the *causa proxima* of the loss. This rule was acted upon in a case, in which a merchant caused to be shipped some casks

General liability of shipowner.

(*r*) *Atkinson v. Ritchie*, 10 East, 530; *Spence v. Chodwick*, 10 Q. B. 517. See also *Pole v. Cetovich*, 9 C. B., N. S. 430; *Ogden v. Graham*, 1 B. & S. 773; and *Aubert v. Gray*, 3 B. & S. 163.

(*s*) *Crow v. Falk*, 8 Q. B. 467.

(*t*) *Bruce v. Nicolopulo*, 11 Exch. 129. See, however, *Valente v. Gibbs*, 6 C. B., N. S. 270. In this case Cockburn, C. J., stated that he was not disposed to dissent from *Crow v. Falk*.

(*u*) *Wilton v. The Atlantic Royal Mail Co.*, 10 C. B., N. S. 453.

(*v*) This appears to be so on principle. Where a bill of lading contained a stipulation that the shipowner was "not to be accountable for leakage or breakage," it was held that this provision did not exempt him from liability for a loss by these means, which arose from gross negligence. *Phillips v. Clark*, 2 C. B., N. S. 156.

of sulphuric acid, as well as some cambric goods, without giving notice to the shipowner that the casks contained acid; and, owing to the casks being placed in proximity with the other goods, and the acid leaking, the cambric was damaged (x). When, however, the owners of a general ship undertake to receive goods, there is an implied undertaking on the part of the shippers that they will not deliver packages of goods of a dangerous nature, which those employed by the shipowners may not, on inspection, be reasonably expected to know to be of that nature, without giving notice (y). And it is expressly provided by the Merchant Shipping Act, 1854, that shipowners need not carry goods of a dangerous nature, and may require any package which they suspect to contain dangerous goods to be opened (z).

Mistakes in contract.

It is important that the master should see that there are no mistakes or erroneous statements introduced into the bills of lading. Where the bill of lading stated incorrectly that the freight had been paid, it was held that the shipowners were estopped from claiming it from the assignees of the bill (a). But, as between the original parties, the bill of lading, like any other receipt, may, subject to the statutory provision about to be mentioned, be shown to be accidentally incorrect (b).

The master cannot bind his owners by a contract to carry freight free; nor can the charterer insist on his signing bills of lading expressing a lower rate of freight than that mentioned in the charter-party (c). The master has, as against his owners, no authority to sign bills of lading for goods not received on

(x) *Alston v. Herring*, 11 Exch. 822. The Court assumed in this case that the shipowner had been guilty of negligence in stowing the acid in proximity to the other goods, but the plea expressly alleged that there had been no neglect on the part of the shipowner in this respect, and it is difficult to see that there was in fact any neglect, seeing that he was ignorant, owing to the wrongful act of the goods owner, of the nature of the contents of the casks.

(y) See the judgments of Lord Campbell, C. J., and Mr. Justice Wightman, in *Brass v. Maitland*, 6 E. & B. 470. Mr. Justice Crompton thought that the duty of the shipper did not extend beyond an obligation to take proper care not to deliver dangerous goods without

notice. See also *Hutchinson v. Guion*, 5 C. B., N. S. 149; and *Farrant v. Barnes*, 11 C. B., N. S. 558.

(z) See the M. S. Act, 1854, s. 329, and the M. S. A. Amendment Act, 1862, s. 38.

(a) *Howard v. Tucker*, 1 B. & Ad. 712; *Gledstanes v. Allen*, 12 C. B. 202. See a good plea to an action on a charter-party, that by a mistake persons who were agents merely had been described as principals. *Wake v. Harrop*, 6 H. & N. 678; *S. C.* in error, 1 H. & C. 202.

(b) *Bates v. Todd*, 1 M. & Rob. 106. See also *Berkley v. Watling*, 7 A. & E. 29.

(c) See *Grant v. Norway*, 10 C. B. 687; *Hyde v. Willis*, 3 Camp. 202; and *Pickernell v. Jauberry*, 3 F. & F. 217.

board; nor has he power to charge his owners by signing bills of lading for a greater quantity of goods than those on board (*d*); and all persons taking bills of lading by indorsement, or otherwise, must be taken to have notice of this. Therefore, where a bill of lading was signed by the master in the usual form, but for goods which were never received on board, and it was deposited with the plaintiffs by the parties to whom the master had delivered it, as a security for advances by the plaintiffs to them, and was indorsed by them to the plaintiffs, together with a bill of exchange which was afterwards dishonoured, it was held in an action against the owners of the ship in which the plaintiffs alleged that they had advanced money on the bill of exchange confiding in the truth of the bill of lading, that they could not recover the amount for which the bill of lading, if true, would have been a good security (*e*). But the position of the master himself is different, for by the statute already mentioned (the 18 & 19 Vict. c. 111) (*f*) every bill of lading in the hands of a consignee or indorsee for value, representing goods to have been shipped on board a vessel, is conclusive evidence of the shipment as against the master or other person who signs it, notwithstanding the goods, or part of them, may not have been so shipped. This regulation is not, however, applicable if the holder of the bill of lading has actual notice at the time when he receives it that the goods have not been laden on board; and the person who signed the bill of lading may exonerate himself by showing that the misrepresentation was caused, without any default on his part, by the fraud of the shipper, or holder of the bill of lading, or of some person under whom he claims (*g*).

There is no duty on the charterers, in the absence of custom or express contract, to hand over to the shipowners copies of the bills of lading of the goods put on board (*h*).

Having mentioned the more important incidents which belong to the contract by bill of lading, it will be convenient to consider a question of very frequent occurrence in practice, namely, the question in whose name the action should be

Parties to sue
on contract of
carriage.

(*d*) *Hubbersty v. Ward*, 8 Exch. 330; and see *Coleman v. Forbes*, 24 L. J., C. P. 125.

(*e*) *Grant v. Norway*, 10 C. B. 665; and see as to an action at common law by the indorsee of a bill of lading against the master for a false statement con-

tained in it, *Gadsden v. McLean*, 9 C. B. 283.

(*f*) See s. 3.

(*g*) *Ib.*

(*h*) *Dutton v. Powles*, 2 B. & S. 174; *S. C.*, in error, *ib.* 191.

brought for any breach of this contract for the carriage of goods.

The general rule with respect to the person who ought to sue in case of the loss of or damage to goods carried in a general ship is, that the action should be brought in the name of the person who has employed the carrier(*i*). For the right to compensation flows from the contract of carriage, and can only be enforced by the party with whom that contract was made. The application of this general rule, however, is frequently difficult, owing to intermediate agencies which intervene between the real parties to the contract, and also to the short and ambiguous terms in which these agreements are usually expressed.

Consignee usually right party.

The consignee is in most cases the party who ought to sue; because the consignor, in entering into the arrangement with the carrier, usually acts as agent for the consignee. It has been frequently held, that if the consignee selects or authorizes the mode of carriage, the contract entered into by the consignor with the carrier is made as agent of the consignee, and the latter is the proper person to sue. This is the rule which has been acted upon in the analogous case of carriers by land. The vendee must sue if he have directed the goods to be delivered either to a carrier generally, or to the particular carrier in question (*k*).

Effect on this question of ownership of goods.

The ownership of the goods is very material in inquiring as to the right party to sue, not because the owner of the goods ought necessarily to bring the action, but because where the property passes to the vendee by delivery to the carrier, it is in general to be inferred that the contract was made with the vendee; that is to say, that the vendor, in making the contract with the carrier, acted as the agent of the vendee (*l*). Where the property in the goods does not pass to the vendee, the provisions of the Statute of Frauds not being complied with, this

(*i*) *Davis v. James*, 5 Burr. 2680; *Moore v. Wilson*, 1 T. R. 659; *Freeman v. Birch*, 1 N. & M. 420; *S. C.*, 3 Q. B. 492, note (*a*), and the cases cited below.

(*k*) *Daves v. Peck*, 8 T. R. 330; *Dutton v. Solomonson*, 3 B. & P. 582; *Coats v. Chaplin*, 3 Q. B. 483; *Dunlop v. Lambert*, 6 Cl. & F. 600. There is no doubt that the consignee, on whose account the goods are shipped, may sue the shipowner for their non-delivery. *Fragano v. Long*, 4 B. & C. 219; *Tronson v. Dent*, 8 Moo. P. C. C. 419. Where a tradesman desired goods to be sent

by a particular carrier for sale on approval, it was held, that the consignor was the proper party to sue the carrier. *Swain v. Shepherd*, 1 Moo. & R. 223. See, however, *Haines v. Wood*, Bull. N. P. 36.

(*l*) This appears to be the true distinction. Some expressions occur in the earlier decisions, from which it might be inferred that, in all cases, the owner at the time of the loss ought to sue—but this obviously cannot be so. See the cases cited in the last note.

inference does not arise, and the vendor is the person who ought to sue (*m*).

It is, however, always important to consider the terms of the bill of lading; for, although it is said, in an early case (*n*), that if goods be consigned by bill of lading to A., he is *prima facie* the owner, and the party to sue if they are lost, but that if the bill be special to deliver to A. for the use of B., the latter should sue, this does not mean that the consignor may not sue when it appears clearly that the contract was entered into with him (in which case the ownership of the goods is immaterial), or when, the contract having been made in the ordinary way, there are no facts to show that he was acting as agent for the consignee. Therefore, where by the bill of lading the goods were to be delivered for the consignor, and in his name, to the consignee, and no question of agency could arise, the consignee having, at the time of shipment, no property in the goods, it was held that an action in the name of the latter for damage done to the goods was misconceived (*o*). And in a later case it was laid down that if there is a special contract with the consignor, on his own behalf, the ownership of the goods is immaterial (*p*). Where goods were shipped for the use, and at the risk of the consignees, and the consignor took bills of lading from the master, making them deliverable to his own order, although it was held that the property vested by the shipment in the consignee, the Court said that the master might be answerable to the consignor for having delivered them otherwise than to his order (*q*). So, where goods were shipped in the same way at the risk of the consignees, and the bills of lading provided for a delivery to the order of the consignors, it was held, not only that the consignors might sue for the non-delivery according to their orders, but that they were entitled to recover as damages the full value of the goods, as it appeared that their intention at the time of the shipment was that the property should only

(*m*) *Coombs v. The Bristol and Exeter Railway Company*, 3 H. & N. 510.

(*n*) *Evans v. Mariett*, 1 Ld. Raym. 271; *S. C.*, 3 Salk. 290.

(*o*) *Sargent v. Morris*, 2 B. & Ald. 277; and see *Dunlop v. Lambert*, 6 Cl. & F. 600. It is to be recollected that an agent may sue on a contract made with him in his own name; *Joseph v. Knox*, 3 Camp. 320; or the real principal may sue. See the cases collected

2 Wms. Saund. 47 q, and the judgment in *Van Casteel v. Booker*, 2 Exch. 706. It may, therefore, happen, if there is an express contract with the consignor, and he acted in making it with the carrier as agent for the consignee, that either the principal or the agent may sue.

(*p*) See the judgment in *Dunlop v. Lambert*, *ubi supra*.

(*q*) *Coxe v. Harden*, 4 East, 211.

vest in the consignees on their accepting some bills of exchange which they did not accept (r). The fact that the bill of lading makes the goods deliverable to the order of the consignor is *prima facie* evidence that it is not intended to pass the property to the consignee, and that the contract of carriage is made on behalf of the consignor. It is a question, however, in each case for the jury, looking at the form of the bill and the surrounding facts, whether the goods were delivered on board to be carried on behalf of the consignor, or of the consignee (s).

Right to bring
trover.

These observations must now be read subject to the modifications introduced by the 18 & 19 Vict. c. 111, which, as has already been mentioned (t), places consignees named in bills of lading, and indorsees of these documents, in the same position with respect to the contract contained in the bills of lading as if it had been made with themselves; and it must be observed that the rules mentioned above with reference to the right parties to sue are only material to determine who is to sue for a breach of the contract of carriage. They have no necessary application when the inquiry is as to the right to bring trover; for this action is not founded on contract, and must be brought in the name of the person in whom both the property and right of possession are vested at the time of the conversion complained of; that is to say, usually in the name of the indorsee of the bill of lading (u).

FREIGHT.

Thirdly; *as to the payment of freight generally, both under charter-parties and under contracts by bill of lading; and as to the shipowner's lien for freight and remedies for its recovery.*

General rules.

Freight is the reward which is payable for the carriage of goods to their destination on a legal voyage (x). In ordinary

(r) *Brandt v. Bowlby*, 2 B. & Ad. 932.

(s) *Ogle v. Atkinson*, 5 Taunt. 759; *Anderson v. Clarke*, 2 Bing. 20; *Mitchell v. Ede*, 11 A. & E. 888; *Wait v. Baker*, 2 Exch. 1; and the judgment in *Van Casteel v. Booker*, *ib.* 708; see also *Turner v. Liverpool Docks Co.*, 6 Exch. 543; *Jenkyns v. Brown*, 14 Q. B. 496, and *Browne v. Hare*, 3 H. & N. 484; *S. C.*, 4 H. & N. 822.

(t) *Ante*, p. 257.

(u) *Halls v. Smith*, 1 B. & P. 563; *Wilmshurst v. Bowker*, 7 M. & Gr. 882; *Valpy v. Gibson*, 4 C. B. 837; *Wait v. Baker*, *ubi supra*.

(x) See *Muller v. Gernon*, 3 Taunt. 394, where it was held, that freight was not recoverable for goods imported in time of war from an enemy's country without a British licence; and *Blanck v. Solly*, 3 Taunt. 89, where the importation in the ship in question was in violation of a statute.

cases, it does not become payable unless the voyage is completed, and the goods are carried to their destination (*y*).

Thus, where the contract was that the freight was to be paid on the right delivery of the cargo at a foreign port, and owing to a hostile occupation of this port the ship returned to England and relanded the goods, it was held, that the event upon which the freight was made payable had not happened, and that none was due (*z*).

The same rule was also acted upon where the freight was made payable on the arrival and discharge of the ship at a particular port, and the voyage was wrongfully interrupted by the seizure of the ship, and she was detained, and afterwards redelivered to the owner, who offered to complete the voyage (*a*).

Where a charter-party provided that a fixed sum should be paid on delivery of an outward cargo, which was to be considered as earned for outward freight, it was admitted that the delivery was a condition precedent although the non-delivery was caused by the seizure of the cargo without any default of the shipowner by persons exercising the powers of Government at the outward port where it should have been delivered (*b*).

There are, however, numerous exceptions to the general rule that the voyage must be completed before the freight is earned; and there is no doubt that freight, or more properly a compensation in respect of the agreement to carry the goods, may be made payable before the commencement of the voyage, and may in some cases be recovered although the contemplated voyage has not been performed.

Thus, although in the absence of any express stipulation there is not even an inception of the right to freight until the ship has broken ground (*c*), still the receiving of the goods is a sufficient Freight in advance.

(*y*) "The safety of the ship is the mother of freight," per Lord Mansfield in *Mackrell v. Simond*, 2 Chit. 678. See also the judgment of Lord Ellenborough in *Hunter v. Prinsep*, 10 East, 394; the judgment in *De Sibale v. Kendall*, 4 M. & S. 37; and that of Maule, J., in *Croster v. Smith*, 1 M. & Gr. 415. "Freight is the reward payable to the carrier for the safe carriage and delivery of goods, it is payable only on the safe carriage and delivery; if the goods are lost on

the voyage nothing is payable;" see the judgment of the Privy Council in *Kirchner v. Venus*, 12 Moo. P. C. C. 361. As a general rule freight is payable on the quantity shipped, not upon the quantity delivered; *Gibson v. Sturge*, 10 Exch. 622.

(*z*) *Liddard v. Lopes*, 10 East, 526.

(*a*) *Smith v. Wilson*, 8 East, 437.

(*b*) *Storer v. Gordon*, 3 M. & S. 308.

(*c*) See the judgment in *Curling v. Long*, 1 B. & P. 636.

consideration for a promise to pay what is often called freight in advance, but is really money paid for taking goods on board and undertaking to carry them; and if the parties make a distinct contract to this effect, so that it is apparent that the prepayment is an advance of freight and not a loan, there is no implied undertaking to return the money if the voyage fails; nor can it be recovered back unless there was a distinct agreement that it should be returned (e). The question, whether the freight is to be paid in advance or not, will, of course, always depend upon the terms of the particular contract. In a case at Nisi Prius, where it appeared that London was the sailing port, and the bills of lading contained the words, "freight for the said goods being paid in London," it was held, that this expression only meant that after the performance of the voyage the freight was to be paid in London instead of at the port of discharge (f). But where a ship was lost on a voyage from London to the Cape, and the words in the bill of lading were "freight for the said goods being paid," but it appeared that the broker who freighted the ship told the owner of the goods that the freight was a certain sum per ton if paid in London, and a larger sum if paid at the Cape, and the latter preferred the contract at the lower rate, and the jury found that the meaning of the contract was, that the lesser sum, if elected, was to be paid at all events whether the ship arrived or not, and that this sum had become due on the taking of the goods on board, the Court held that the verdict was a proper one (g). The cases above mentioned are those of express contracts, by which the freight, or a compensation in lieu thereof, is made payable independently of the performance of the voyage. Where, however, there is no express contract to this effect the rule is other-

(e) *Anon.* 2 Show. 283; *Blakey v. Dickson*, 2 B. & P. 321; *De Silvale v. Kendall*, 4 M. & S. 37; and see the judgment in *Mansfield v. Maitland*, 4 B. & A. 585; *Saunders v. Drew*, 3 B. & Ad. 445; *Hicks v. Shield*, 7 E. & B. 633, and the judgment of Dr. Lushington in *The Salacia*, 32 L. J., P. M. & A. 45. See, as to the meaning of a contract to pay freight in advance, "subject to insurance," *Jackson v. Isaacs*, 3 H. & N. 405, and *ante*, p. 243.

(f) *Mashiter v. Buller*, 1 Camp. 84; see also *Clark v. Drusina*, cited in

Andrew v. Moorhouse, 1 Marsh. 123. In *Lidgett v. Perrin*, 11 C. B., N. S. 362, where the words in the bill of lading were "freight payable here," the Court held, that it was a question for the jury to say whether, looking at all the surrounding circumstances, the contract was a contract for freight contingent on the ship's arrival at her destination, or for a sum payable on the receipt of the goods on board her.

(g) *Andrew v. Moorhouse*, as reported 5 Taunt. 435, and *Kirchner v. Venus*, 12 Moo. P. C. C. 361.

wise. For although it is said by Molloy that if goods are fully laden on board and the ship has broken ground, and the merchant on consideration resolves not to proceed on the adventure, the freight is due by the maritime law; freight, properly speaking, would not be recoverable in such a case by our law, but the shipowner would only have a right of action against the freighter for the damage consequential on his breach of contract (*h*). Where it was agreed by a charter-party that a portion of the freight should be paid "on the final sailing of the vessel from the port of loading," and the ship being fully equipped for sea proceeded from the docks down a canal communicating therewith and being within the limits of the artificial port, and there grounded, it was held that no freight had become payable, the vessel never having been out of the limits of the port or at sea (*i*). And in another case, where a proportion of the freight was to be advanced "on the ship having sailed," and it appeared that the vessel had left the harbour and proceeded into the roads where her loss took place, with no intention of returning, but the shrouds and cables were not in a proper condition for sailing, the mate was not on board, the bills of lading were not signed, and the master had soon after left her, it was held that no freight was due (*k*). In the same case the charter provided that the ship "being tight, strong, &c." should sail, and it was held that the seaworthiness of the ship at the time of sailing was also a condition precedent to the right to any freight. A similar decision was come to in a later case (*l*), in which the vessel had left the harbour loaded, and in a fit state for sailing and with the captain on board, but the clearances not being completed or the bills of lading signed, he afterwards left her and returned to shore.

It is important to recollect, that it by no means follows because a sum of money is called "freight in advance," that the legal incidents belonging to freight will attach to it. Thus, where it was agreed that money should be paid at the port of shipment, in respect of the carriage of goods, "the ship lost or not lost," it was held that this sum did not acquire the legal

(*h*) Molloy, B. 2, c. 4, s. 4, and the judgment of Eyre, C. J., in *Curling v. Young*, 1 B. & P. 636.

(*i*) *Roslandts v. Harrison*, 9 Exch.

444.

(*k*) *Thompson v. Gillespy*, 5 E. & B. 209.

(*l*) *Hudson v. Bilton*, 6 E. & B. 565.

incidents of freight, and that the shipowner had, in the absence of express contract, no right of lien on the goods in respect of it (*m*).

Freight *pro rata*.

Further, where a part only of the voyage has been performed, freight is in some cases recoverable for that portion *pro rata itineris peracti*.

The ancient rule of the maritime law has been stated to have been, that if the goods were received at an intermediate port by the merchant, and the noncompletion of the voyage proceeded from no fault of the master, freight *pro rata* was payable (*n*). This rule, however, whatever may have been the practice abroad, was never adopted into our law, although in the earlier cases there are ambiguous expressions on this point. The rule recognized in England is this: If the original contract has not been performed, no claim can arise under it; but if there is a voluntary acceptance of the goods at a point short of their destination, in such a mode as to raise a fair inference that the further carriage was intentionally dispensed with, a new contract will be implied to pay compensation commensurate with the benefit actually received; that is to say, to pay freight for that portion of the voyage which has actually been performed (*o*).

Thus, in an early case (*p*), where upon a voyage from Newfoundland to Lisbon, the ship was captured after sailing fourteen days, within four days' sail of that port, and shortly afterwards recaptured and brought into a port in Devonshire, where the shipowners abandoned her to the insurers, and as there was no beneficial market for the goods in England, the owners of the

(*m*) *Kirchner v. Venus*, 12 Moo. P. C. C. 361. See also *post*, p. 298.

(*n*) See the judgment of Lord Mansfield in *Luke v. Lyde*, 2 Burr. 889. This subject is referred to in the laws of Oleron, Art. 4, the laws of Wisby, Art. 40, and in the Consolato, Chapters 36, 37 and 39, and also in the Rhodian law, Art. 42, but no distinct general rule on this question can be gathered from the ancient systems of maritime law. The terms of these laws are obscure, and they relate usually either to cases in which the merchant receded from his contract and required his goods to be redelivered to him, or to cases (probably not uncommon in times when the merchants

frequently accompanied their goods on the voyage) in which the master refused to allow the merchant to retake the possession of the goods on the happening of any disaster to the ship. By the Roman law freight was not allowed where the completion of the voyage was prevented by sea perils. See 1 Pardessus Lois Marit. 66, 110, 325; see also *The Hiram*, 3 Rob. 180, and the note to this case at p. 184.

(*o*) See the judgment of Parke, B., in *Vierboom v. Chapman*, 13 M. & W. 238; *Mulloy v. Backer*, 5 East, 316; see also the judgment in *Hunter v. Prinsep*, 10 East, 378, and the cases cited below.

(*p*) *Luke v. Lyde*, 2 Burr. 889.

cargo sent it to Bilboa, where it was sold for a price less than might have been obtained if the original voyage had been completed, it was held that the loss of the market was immaterial, and that the goods having been accepted, a rateable proportion of the freight was payable. The facts upon which the Court gave judgment in this case were stated in the form of a special case, and it did not appear that the shipowners ever offered to carry the goods on to Lisbon, or that they were asked to do so. It may be doubted whether the same decision would now be arrived at upon similar facts.

Upon the same principle where a ship was freighted to Ham-
burgh, and was prevented by restraints of princes from arriving
there, and the consignees directed the master to deliver the cargo
at Gluckstadt, and accepted a portion of it there, it was held
that they were liable to pay freight *pro ratâ* for the goods which
they had accepted (q).

In an earlier case in the House of Lords (r), where the goods
were to have been delivered at Glasgow, and the ship having
been lost within a short distance of that port, the owners of
some of the goods abandoned them to the insurers, who took
possession of that part of the cargo, and conveyed it to Bristol
(although the master provided another ship, and offered to carry
it on to Glasgow), it was held that the whole freight was payable.
Freight *pro ratâ* was also decreed as to another portion of the
goods which the master declined to carry on to Glasgow, and
which the agents of the owners of the goods took possession of,
and sent on there by another ship.

In order, however, to give a right to freight *pro ratâ*, the in-
terruption must occur during the *voyage*. Thus, where the ship
was captured before she broke ground, it was held that no claim
of this kind could arise, although the shipowners had incurred a
great expense in loading the cargo (s). It is important to re-
collect also, that in order that the acceptance of the goods may
be relied on as evidence of a new contract, it must appear that it
took place under circumstances from which it may reasonably
be inferred that the further carriage was dispensed with. Thus
it was held, that no claim to freight *pro ratâ* existed where
the master, before the completion of the voyage brought the

(q) *Christy v. Row*, 1 Taunt. 300.

(r) *Lutwidge v. Grey*, cited in *Luke*
v. Lyde, 2 Burr. 889; and more fully in

M.P.

Abbott on Shipping.

(s) *Curling v. Long*, 1 B. & P. 639.

ship back, because there was a danger of her being confiscated at the port of discharge, and landed the cargo, and afterwards legal proceedings having been taken by the owners of it to prevent him from selling it, it was by consent delivered into their hands without prejudice to the rights of the parties (*t*). In another case the goods were to be carried from Shields to Lisbon, and the freight was by the terms of the charter-party to be paid on a right delivery of the cargo; the ship sailed from Shields to Portsmouth, where she joined convoy, and after sailing from Portsmouth and being detained nearly a month by contrary winds, was recalled by the convoy, owing to the hostile occupation of the port of delivery; she then returned to Portsmouth, where the cargo was sold by consent of all parties without prejudice to their rights, after an application had been made to the shippers to accept the cargo, accompanied by a notice that the shipowners reserved their right to proceed for the freight, to which the former replied that they did not consent to the goods being landed if they were to be called upon for the freight. It was held, upon these facts, that no claim for freight *pro ratâ* could be sustained (*u*).

Where the goods were to be delivered in London, and the freight was by the charter-party to be paid on a right delivery of the cargo, and the ship after capture and recapture was wrecked at St. Kitts, where the cargo was sold by the Vice-Admiralty Court on the application of the master, who acted *bonâ fide*, but without instructions from any of the parties, it was held, that the sale was tortious and unauthorized, and that no freight could be recovered (*x*). The Court distinguished the case on this ground from an earlier case (*y*), in which a ship and cargo having been condemned and sold by a French Court of competent jurisdiction, and this sentence having been afterwards reversed, it was held that freight *pro ratâ* was due, as the shipowners had been prevented from carrying the goods to the delivery port by no fault of their own, but only by the act of the foreign Court in ordering a sale pending the suit.

The carriage of the goods, as far as it actually takes place, must also be the act of the shipowners, in order to entitle them to freight *pro ratâ*. A ship being chartered from London to

(*t*) *Osgood v. Groning*, 2 Camp. 466.

see also *The Louisa*, 1 Dods. 319.

(*u*) *Liddiard v. Lopes*, 10 East, 526.

(*y*) *Baillie v. Moudighani*, Park on Insur. 90.

(*x*) *Hunter v. Prinsep*, 10 East, 378;

Buenos Ayres and to return with a cargo to a port between Gibraltar and Antwerp, the freight was to be paid in a gross sum on the delivery of the homeward cargo. The ship proceeded to Buenos Ayres and loaded goods on board, and then sailed for Gibraltar, but on her way she was obliged by sea perils to put into Fayal, where about one-third of the cargo was disposed of, partly on account of the goods having been rendered worthless by sea damage, and partly in order to defray necessary expenses. The remainder was left there by the master, who returned to England, leaving instructions with the Vice-Consul at Fayal to forward it to Gibraltar, but without giving him any authority on the shipowner's behalf to contract for the hire of a vessel. The Vice-Consul thereupon chartered a vessel *on behalf of the owners of the cargo*, which carried the remainder of the cargo to Gibraltar and delivered it there on payment of freight. It was held, under these circumstances, that the carriage to the port of destination could not be said to be done by the shipowners, and that the charter-party freight was not payable; and also that no freight *pro rata* could be claimed in respect of the carriage from Fayal to Gibraltar, as this was not the act of the shipowners, but that a reasonable freight was due to them for the carriage from Buenos Ayres to Fayal from which the shippers had derived benefit, and after which they had, in fact, accepted the goods at Fayal, by their agent the Vice-Consul, in order to forward them on to Gibraltar (z).

The whole question of the right to freight *pro rata itineris* was also much considered in a more recent case, in which the principles mentioned above were recognized. In this case a cargo had been shipped at Batavia to be delivered to the plaintiff at Rotterdam; the vessel was compelled by stress of weather to put into the Mauritius, where the cargo was found to be so damaged that it was of necessity sold by the master, who acted in this respect *bona fide*, but without the knowledge of either the shipper or of the shipowner. The Court held that these facts afforded no presumption that the owner of the cargo had agreed to receive it at the intermediate port, and consequently that no freight had become due (a).

In the cases mentioned above, in which freight *pro rata* has been recovered, it will be found that the further carriage of the

(z) *Mitchell v. Darthen*, 2 B. N. C. 555.

(a) *Vlierboom v. Chapman*, 13 M. & W. 280.

goods was intentionally dispensed with; but where before the completion of a voyage the goods and ship were seriously injured by sea perils, and the goods were returned by the master to one of the charterers not absolutely, but with an authority to him to act for the ship as well as the cargo, it was held (the goods having been sold by the charterer, under circumstances found to be reasonable by the jury) that freight could not be claimed from the charterers, and that they were not liable in damages for wrongfully preventing the master from carrying on the goods and earning the charter freight. The Court was also of opinion, in this case, that the authority given by the master could not be countermanded by the shipowners after it had been acted upon and expense had been thereby incurred. In this case the ship was bound for Havana, with a general cargo under a charter-party at a lump freight; soon after leaving Liverpool the ship ran on the Irish coast and sustained serious damage, but was ultimately got into a port on that coast, where the whole of the cargo was found to be so damaged as to be either actually incapable of being taken on, or incapable of being carried to its destination in a merchantable condition, except a portion, in respect of which the action was brought, which was taken back to Liverpool and there sold, under the authority given by the master (*b*).

Form of claim. Lastly, it must be recollected, that where the contract, whether it be under seal or not, provides for the delivery of the goods at a particular port, no action lies *on it* where this delivery is prevented, although there may have been an acceptance of the goods at an intermediate place. The right to freight, if it exist, arises out of a new contract, either express or implied (*c*).

Single and double voyages.

It often becomes important, with respect to questions of freight, to ascertain whether the contract is for one entire voyage, or for several distinct ones. Thus, if a ship is to proceed from A. to B. and back, it is material to consider whether this is meant to be one, or two distinct voyages; for if the outward and homeward voyages are intended to be distinct so far as relates to freight, the non-performance of the return voyage will not affect the claim to the outward freight.

The determination of this question depends in all cases upon

(*b*) *Blasco v. Fletcher*, 14 C. B., N. S. 147.

(*c*) *Cook v. Jennings*, 7 T. R. 381; and see *Liddiard v. Lopes*, 10 East, 526.

the terms of the particular contract that has been made. No general rule can be laid down. Several of the cases, however, which have been already cited as to conditions precedent to the right to freight, will be found to bear on this point.

Expressions such as "the outward and homeward voyages" are important to show an intention that they should be considered as distinct, and an opposite construction would probably be put upon a contract which contained a stipulation that the freight was to become due, or to be paid, at the home port (*d*). Where a charter-party provided that a vessel should ship goods for Kingston, or any other port in Jamaica, and having discharged the same should receive on board a cargo from thence, or from a port on the Spanish Main, if required, and deliver the same at a port in the United Kingdom on being paid a certain sum for freight in ten days after sailing from Gravesend, and a further sum in two months after a right delivery of the homeward cargo, provided she should be required to proceed to one port only in Jamaica, and a further sum should she be required to go to two or more ports in that island, and that in case she should be ordered to the Spanish Main, 4*l.* per day was to be paid for every day after the twenty-fifth after her arrival at Jamaica, until despatched from her loading port, (demurrage at a certain sum per month, or in proportion for a less period, payable on settlement of the hire of the ship,) it was held, that the meaning of the parties was that the voyage to the Spanish Main was to be part of the homeward voyage, not an intermediate one, and that the 4*l.* per day was not payable until two months after the delivery of the homeward cargo (*e*).

The Court of Admiralty, where questions as to freight frequently arise in the cases of captured vessels, has usually acted upon the same principles; but in some cases this Court has exercised a wider and more equitable jurisdiction over questions of freight. Thus, it has been frequently decided that, in ordinary cases, the goods must be carried to their destination before a claim for freight can arise (*f*). There must be an entire execution of the contract, or such an execution as the shipowner

Rules in Court
of Admiralty
as to freight.

(*d*) See *Malyne*, p. 98; *Smith v. Wilson*, 8 East, 437; *Mackrill v. Simons*, Abbott on Shipping.

(*e*) *Crozier v. Smith*, 1 M. & Gr. 407.

(*f*) See the judgments in *The Diana*, 5 Rob. 71; and in *The Frow Anna Catha-*

rina, 6 Rob. 271; also *The Etrusco*, cited 5 Rob. 69; and the cases collected in the following notes. This principle appears not to have been acted upon in *The Racehorse*, 3 Rob. 101; or in *The Hamilton*, cited by Sir W. Scott, *ib.* 107.

can effect consistently with any incapacity under which the cargo may labour. Where the non-completion of the contract is caused by an incapacity of this description alone, the goods owner cannot allege that the contract is not performed. If, however, the vessel herself is incapacitated, the owner cannot demand the freight, for which he stipulated only on the performance of his engagement (g). Thus, where a ship sailed on a voyage from Liverpool to Halifax and back, and after proceeding about half way to Halifax she was captured and recaptured, and brought back to Plymouth, and the charter-party showed that the intention of the parties was that the freight should be paid on the completion of the voyage, it was held, that no freight *pro rata* was claimable (h).

Where a ship in distress put into an English port, after having performed the greater part of her voyage, and she was seized there, on suspicion, as a prize, and the cargo was necessarily taken out in order to repair the ship, but afterwards the cargo was restored, and at a later period the ship and part of the cargo were sent to London, the remainder of the goods being forwarded by another conveyance to its destination, it was held, that the shipowners were entitled to freight *pro rata*, and only *pro rata*, as the failure of the performance of the original contract was in no way owing to the cargo (i). And where a Swedish ship on a voyage to Lisbon was brought into an English port under an embargo against Swedish ships, and it became necessary to unload the cargo, which was claimed for merchants at Lisbon who were not subject to the embargo, and they were compelled to find another ship to convey it to its market, the Court held, that as the detention and the carriage of the cargo out of its course had arisen by reason only of the national character of the ship without any co-operation on the part of the cargo, no freight was payable (k).

So, where a cargo belonging to English merchants was to be taken by a Swedish ship to Venice, and a few days after the vessel sailed she was obliged by bad weather to put into Falmouth, where she was detained under an embargo against Swedish ships, but her cargo was restored to the merchants, it was held, that they were not liable for any freight, although they

(g) See the judgment of Sir W. Scott in *The Fortuna*, Edw. 57.

(h) *The Hiram*, 3 Rob. 180; *The Wilhelmina*, ib. 234; and the judgment

in *The Fortuna*, ubi supra.

(i) *The Copenhagen*, 1 Rob. 289.

(k) *The Worldsborgaren*, 4 Rob. 17.

were bound to pay the expenses incurred by the ship on account of the cargo (*l*).

Captors who perform the contract by carrying the goods to their destination are usually entitled to freight. This is the general rule (*m*). And in some cases, which are rather equitable applications of this rule than extensions of it, it has been held, that freight is payable although the voyage has not been performed. Thus, where the goods had not been carried to the actual port of destination in Holland, but to this country, to which the merchants had intended them finally to come, and to which they would have been consigned in the first instance but for regulations of the Dutch Government which prevented their being brought here directly, the Court held that they had been brought to their real, although not to the nominal destination, and that freight was therefore due (*n*). And in the cases of the American ships bound to France or Holland, which were brought into the ports of this country under the prohibitory law in force during the war of the beginning of this century, the full freight was pronounced to be due where the owners of the cargoes elected to sell here, for the Court considered that a voyage from America to this country was nearly the same in effect as a voyage to the contiguous countries to which the vessels had been originally destined (*o*).

Application of rule in cases of capture and substantial performance of contract.

The decisions in the Court of Admiralty in the cases of neutral vessels carrying, in war time, cargoes liable to seizure, do not, properly speaking, form exceptions to the general rule mentioned above, since in these cases the voyage is, as against the party who is to pay freight, considered to be completed. Thus, it has been long settled that a neutral ship may carry the goods of an enemy, subject to the right of the other belligerent to bring in the ship for the purpose of obtaining an adjudication on the cargo (*p*).

(*l*) *The Isabella Jacobina*, 4 Rob. 77.

(*m*) *The Fortuna*, 4 Rob. 278; *The Diana*, 5 Rob. 67; *The Vrow Anna Catharina*, 6 Rob. 269.

(*n*) *The Diana*, 5 Rob. 67.

(*o*) See the judgment of Sir W. Scott in *The Friends*, Edw. 246.

(*p*) See the judgments in *The Bremen Flügge*, 4 Rob. 91, and in *The Vrow Henrica*, *ib.* 847. The right of neutral ships to carry enemy's goods in time of war depends of course on the terms of

particular treaties. In the treaty assented to at the Congress of Paris (April 16, 1856), it was declared (by art. 2), that the neutral flag covers enemy's goods with the exception of contraband of war; and (by art. 3) that neutral goods, with the exception of contraband of war, are not liable to capture under an enemy's flag. The history of and the authorities on this subject will be found in Twiss's *Law of Nations*, Chap. V.

And it has usually been the practice of the Court of Admiralty to allow freight to neutral vessels, where the cargo is condemned as enemy's property, and the ship is restored: for in these cases, *capture is equivalent to delivery*; that is to say, the captor who possesses himself *jure belli* of the enemy's goods is considered to represent the enemy, and since he prevents by his seizure the completion of the voyage, and the earning of the whole freight, the capture, as against him, operates as an actual delivery of the goods to the consignee (*q*).

It will now be convenient to mention some peculiar cases in which questions have been raised as to the right to freight.

**Freight for
cattle.**

It is said by Molloy, that if cattle are sent on board and the freight is to be paid for their lading, it becomes due even although they die on the voyage, and that this is the rule if there is no particular agreement made either as to the lading or as to the transport; but that it is otherwise if the freight is to be paid for transporting them (*r*). In practice any case of this kind

(*q*) See the judgment in *The Copenhagen*, 1 Rob. 291; the note to *The Atlas*, 3 Rob. 304; and the judgments in *The Bremen Flugge*, 4 Rob. 91, and in *The Prosper*, Edw. 76. If the ship and cargo, being both neutral, are restored, the ship must proceed and complete her voyage before she can demand freight. See the judgment in *The Copenhagen*, *ubi supra*. In these cases the captor takes *cum onere*, and the freight is a lien which precedes all other claims; unless, indeed, there have been *mala fides* in the transaction, or the ship has been guilty of a departure from pure neutral conduct; as, for instance, by carrying from one enemy to the colony of another allied in the war, or by carrying on for the enemy his coasting or his colonial trade, or by acting in his revenue service. See the judgment in the *Vrow Henrica*, 4 Rob. 347, and the cases cited at the commencement of this note; also *The Rose*, 2 Rob. 206; *The Emanuel*, 1 Rob. 296; *The Immanuel*, 2 Rob. 186; *The Rebecca*, *ib.* 101; and *The Conventientia*, 4 Rob. 201. See also the American cases, *The Fanny*, 10 Wheaton, 658; *The Commercen*, 2 Gallison, 264. The principle which is acted upon in these cases is, that on the breaking out of a war, neutrals have a right to carry on their *accustomed* trade; but they are not en-

titled to engage in trades which are open to them only by reason of the accidents of the war. See *The Wilhelmina*, 2 Rob. 101, note, and the judgment in *The Immanuel*, *ubi supra*. Freight is not allowed if the articles carried are contraband according to the law of nations, such as tar or sail cloth; for indirect assistance is afforded to the enemy by the carriage of these goods. *The Mercurius*, 1 Rob. 288, and *The Oster Risoer*, 4 Rob. 199. It appears that tar, when the produce of the country of the owner of the cargo, may be carried subject to being brought in, not for confiscation, but for pre-emption. See the judgment in *The Sarah Christina*, 1 Rob. 241; and further, as to contraband of war, *post*, Chap. VII., **INSURANCE**. The freight which the captor must pay in these cases is usually measured by the terms of the charter-party; but if there has been any fraud in the transaction, or if the hazard of the war has raised the rates of freight to an extraordinary degree, this measure will not be adopted. See the judgment in *The Twilling Riget*, 5 Rob. 85.

(*r*) See Molloy, B. 2, c. 4, s. 8. By the Roman law, if a contract was made for the carriage of slaves, no deduction was to be made from the freight in respect of any of them that

would depend upon the terms of the particular contract under which the cattle were shipped.

Questions have also arisen as to the effect of a detention during the voyage on the claim for freight where it is to be paid at so much for a given time, as, for instance, as so much per month. The determination of these cases depends also upon the terms of the contract. The general rule is, that the freight continues payable, if the detention does not discontinue the voyage, or suspend the contract, and does not proceed from the default of the shipowner(s). In a case in which the contract provided that a deduction should be made from a gross sum payable for the freight, "in case of the inability of the ship to execute or proceed on the service;" these words were held to extend to an inability to proceed to sea caused by the death and desertion of some of the crew owing to the existence of small pox on board (t).

Effect of detention during voyage.

In cases of necessity, as, for instance, where the ship is wrecked, or otherwise disabled in the course of the voyage and cannot be repaired, or cannot be repaired without too great a delay and expense, the master may procure another competent vessel to carry on the goods and earn the freight. If other means to forward the cargo can be procured the master must procure them or lose his freight (u).

Transhipment.

Where there has been a transhipment, questions of some difficulty have arisen as to the rate of freight which is recoverable. Where goods were shipped in a general ship under a bill of lading, in which the freighter was named as the consignee, and

might die on the voyage, unless it appeared from the agreement that the shipper intended to pay for those only who were safely landed. Dig. lib. 14, tit. 2. See, as to a contract to pay the highest freight which the shipowner could prove to have been paid for ships on the same voyage, *Gether v. Capper*, 15 C. B. 39, 696, and 18 C. B. 866.

(s) See *Havelock v. Geddes*, 10 East, 555; *Moorsom v. Greaves*, 2 Camp. 627; *Ripley v. Scarfe*, 5 B. & C. 167, and *Valente v. Gibbs*, 6 C. B., N. S. 270; and also *ante*, p. 244, as to the suspension of the contract by war, blockade, or the like.

(t) *Beatson v. Schank*, 3 East, 283.

(u) See 3 Kent Comm. 210; *Shipton*

v. Thornton, 9 A. & E. 316. There is no direct authority in our law books as to whether it is the duty or only the right of the master to tranship. The foreign jurists have differed on this question. The arguments on either side are shortly stated, and many of the foreign authorities on the subject are collected in the judgment in *Shipton v. Thornton*, *ubi supra*. In America it has been held, that it is the duty of the master to tranship where it is possible. 3 Kent Comm. 212. See, as to the duties of the master in cases of injury to the ship, and as to the effect of transhipment on the contract of insurance, *post*, Chap. VII., INSURANCE, Part II.

the completion of the voyage was prevented by damage done to the ship by tempest, but the goods were forwarded by the master to their destination by another ship, under a bill of lading making another person consignee, it was held, that the freighter was liable, on the receipt of the goods, for the whole freight originally contracted for, although they were carried by the second conveyance at a less freight (*x*).

Effect of capture and re-capture.

Freight is usually recoverable after capture and re-capture, if the voyage is completed (*y*). The rules by which the Court of Admiralty is guided on questions arising out of the capture of neutral vessels carrying enemies' goods have been mentioned in an earlier part of this chapter (*z*).

Effect of damage to goods.

If the goods are carried and delivered to the merchant, he is not entitled to abandon them, or to resist the payment of freight by reason of their being damaged, unless there is some stipulation to this effect in the contract. The injury to the goods, if caused by the negligence of the master, will only afford matter for a cross action (*a*).

There is no case in which the delivery of less than a complete cargo has not been held to be apportionable.

Effect of short delivery.

Where a complete cargo was to be laden and delivered on freight being paid, it was held that the delivery of a *complete* cargo was not a condition precedent, the freighter having his remedy in damages for any short delivery (*b*). So, where freight was to be paid upon the right and true delivery of the cargo agreeably to bills of lading, it was held to be payable upon proof of the entire number of casks mentioned having been delivered, although it appeared that the contents had been damaged by the negligence of the master and crew. The party injured had, it was said, his counter-remedy by action for the negligence (*c*). No claim can be set up by the purchaser of a

(*x*) *Shipton v. Thornton*, 9 A. & E. 316.

(*y*) See the judgment in *Beale v. Thompson*, 3 B. & P. 428; and *Bergstrom v. Mills*, 3 Esp. 36; see also *Moorsom v. Greaves*, 2 Camp. 627.

(*z*) See *ante*, p. 279.

(*a*) *Hotham v. East India Company*, 1 Dougl. 271; *Garrett v. Melhuish*, 4 Jur., N. S. 943, V. C. Stuart; *Stimson v. Hall*, 1 H. & N. 831; *Alston v. Herring*, 11

Ex. 822, and *ante*, p. 268.

(*b*) *Ritchie v. Atkinson*, 10 East, 295; and see *Christie v. Row*, 1 Taunt. 300; *Gibson v. Sturge*, 10 Ex. 622; and the judgments in *White v. Beeton*, 7 H. & N. 42.

(*c*) *Davidson v. Gwynne*, 12 East, 381; see also *Hotham v. East India Company*, 1 Dougl. 272, where a provision in the charter-party, that the

cargo against the seller in respect of short delivery, if it appears from the terms of the contract between them, that it was intended that the purchaser should take the chance of the quantity turning out more or less (*d*).

Where a cargo of wheat, to be shipped, had been sold, and the contract note mentioned certain quantities as the maximum and minimum to be shipped, it was held that the purchaser was entitled to refuse to accept the shipping documents, or to pay for the cargo, as the bill of lading and shipping documents represented the cargo to consist of a greater quantity than the maximum fixed. It was also held that the purchaser was not bound to pay for the cargo, or to accept shipping documents which represented it to be within the prescribed limits, if in fact it exceeded them (*e*).

Where by the charter-party a full cargo is to be shipped, consisting of heavy and light goods, or of different kinds of goods at lower and higher freights, it is often material to ascertain the precise meaning of the contract; as in the latter case, the amount of freight will depend on the character of the goods laden, and in the former, the shipowner would be benefited by the shipment of heavy goods adapted to supply the place of ballast.

Contracts to load a full cargo.

No general rule can be laid down which will apply to all these cases; but the decision of this question depends upon the intention of the parties as apparent on the express contract, or as it is to be implied from the surrounding circumstances, or from any custom of the particular voyage capable of being annexed to the contract; and the shipper has usually the option to load what goods he thinks best, and the shipowners are bound to ballast the ship properly (*f*).

shipowners were only to be liable in respect of "ship damage" to the goods, was held to mean, not that they were to be answerable for damages occasioned by acts of God, such as storms, but for those only which were caused by their own fault, or that of their servants, or which arose from defects in the ship, improper stowage, or the like.

(*d*) *Covas v. Bingham*, 2 E. & B. 836.

(*e*) *Tamvaco v. Lucas*, 1 E. & E. 581—592. See also *Tamvaco v. Lucas*, 1 B. & S. 185, where a question arose on a similar contract as to the sufficiency

of a policy of insurance, tendered as one of the shipping documents.

(*f*) See the cases cited in the following notes, and *Irving v. Clegg*, 1 B. N. C. 53; *Copper v. Forster*, 3 B. N. C. 938; *Gibbon v. Young*, 2 Moore, 224; *Cockburn v. Alexander*, 6 C. B. 791. Where a charter-party provided that the charterer should load a full and complete cargo of sugar and other lawful produce, freight to be paid, in certain rates on certain specified goods, and in proportional rates on other goods, if any should be shipped, except what might

Thus, where the covenant was to provide a full cargo consisting of copper, tallow, and hides, *or other goods*, on which separate rates of freight were to be paid, it was held that it was performed by supplying as much tallow and hides as the master chose to take on board, and that the freighter was not bound to provide any copper; although it was necessary, for want of it, to retain the ballast on board (*g*). Where it was agreed by the charter-party that the ship should proceed to Baltimore and there load a full cargo of produce, and that freight should be paid at and after a certain rate per barrel of flour, meal, and naval stores, but that a higher sum per quarter of 480 lbs. was to be paid for Indian corn, or other grain, and that the cargo should not consist of less than 3000 barrels of flour, meal, or naval stores, but that not less flour or meal than naval stores should be shipped, and it appeared that the shipper had put on board a large quantity of oats, but there was evidence that oats were not an usual shipment from America, and that a quarter of them weighed much less than 480 lbs., and occupied a much larger space than a quarter of Indian corn, or of wheat at that weight, it was held that the words *other grain* were confined to *other grain weighing 480 lbs. a quarter*, and did not include oats; and also that the shipowner was entitled to freight as if 3000 barrels of flour, meal, or naval stores had been shipped, and that for the rest of the space he was to be paid as if it had been filled with Indian corn, or other grain of the average weight of 480 lbs. per quarter (*h*). And where a freighter had the option to load a ship either wholly with one kind of goods at a higher rate, or partly with such goods, and partly with others at a less freight, and it was necessary that the latter, if laden at all, should be laden first, it was held, that the freighter, by beginning to load with the goods at the higher freight, had elected to furnish an entire

be shipped for broken stowage, which should pay as customary, and the charterer put on board as large a quantity of timber as the vessel could carry, but did not supply any broken stowage, for some of which there was room, it was held, that the question as to the completeness of the cargo was for the jury; but that, if it was for the Court, the charterer, having exercised his right of choice, and put on board an article with which the ship could not be fully loaded, was bound to supply broken stowage to fill up the cargo; for since

the shipowner would have been bound to carry some broken stowage if the charterer had requested him to do so, there was a correlative obligation on the part of the charterer to supply some. *Cole v. Meek*, 12 W. R., C. P. 349. The shipowner may put merchandize on board as ballast if it occupy no more room than the ballast would have done. See *Towse v. Henderson*, 4 Ex. 890, and *ante*, p. 47.

(*g*) *Moorsom v. Page*, 4 Camp. 103.

(*h*) *Warren v. Peabody*, 8 C. B. 800.

cargo of such goods, and that not having furnished a complete cargo the jury were warranted in assessing the damages for the entire complement at the higher rate (*i*). Usually, however, where the option of selecting the articles lies with the freighter, the proper mode of estimating the damages, if a full cargo is not loaded, is by an average upon the various rates of freight, calculated in the proportion of the different articles usually carried on such a voyage (*k*).

Where a ship was to proceed to a bar-harbour, or as near thereto as she could safely get, and the merchant was to load a full cargo, and at the time of the making of the charter-party, both parties knew that if a full cargo were loaded within the bar, the vessel would not be able to recross it and get out to sea, it was held that the shipowners had complied with their undertaking by taking the ship within the bar and receiving there as much of the cargo as she could carry over the bar, and by waiting outside the bar for the remainder (*l*). In a later case a charter provided that the ship should proceed to a particular port or so near thereunto as she could safely get and should be ready to load by a given day, taking from the factors of the merchant such produce as he might find it convenient to ship, not exceeding what the ship could reasonably stow and carry. The ship so loaded was to proceed to London and deliver the cargo on being paid a lump sum for freight, and the cargo was to be taken to and from alongside at the merchant's risk. The ship proceeded to and entered the port named, which was a bar-harbour which could not be entered or left at certain tides by vessels of a certain draught. A cargo was then placed on board by the agent of the merchant, for which the master signed bills of lading. When the vessel was thus laden she drew so much water that she grounded upon the bar, and it became necessary, therefore, to take out nearly all the goods. The master then offered to take on board so much of the cargo as would not prevent his passing the bar in safety, and then to remain outside the harbour, and, if possible, to take in there, at

(*i*) *Benson v. Schneider*, 7 Taunt. 272.

(*k*) *Thomas v. Clarke*, 2 Stark. 450; *Capper v. Forster*, 3 B. N. C. 938; *Cockburn v. Alexander*, 6 C. B. 791; and *Warren v. Peabody*, 8 C. B. 800. See also, as to the measure of damages for not loading pursuant to charter-party,

Smith v. M'Guire, 3 H. & N. 554, and *Wilson v. Hicks*, 26 L. J., Ex. 42.

(*l*) *Shield v. Wilkins*, 5 Ex. 304. See, as to notice to the merchant that the ship is ready to receive cargo, *Fairbridge v. Pace*, 1 Car. & K. 317.

the merchant's risk, the remainder of the cargo. The agent of the merchant refused to assent to this, and the ship sailed with only a small quantity of goods on board. Under these circumstances, it was held the shipowners were not entitled either to the stipulated freight or to damages for the refusal to ship the cargo, for that the master, although not bound to go within the bar at all, having done so and having signed bills of lading, was bound to find his way to his destination (*m*).

In another case where a charter-party had been made in the usual form, by which the shipowner was to receive and the charterer to ship a full cargo, it was held that the latter had no right to load the cabin; and that as he had done so by consent, the freight payable in respect of the portion of the cargo so loaded was not the charter freight, but the current rate of freight at the loading port at the time of the taking in of the cargo (*n*). Where a charter-party provided that the charterer should load "a full and complete cargo" of sugar and molasses, it was held that evidence was admissible to show that a custom existed at the port of loading to load sugar in hogsheads, and molasses in puncheons, although it might be that a smaller quantity of cargo would be loaded in this way. In this case the evidence did not alter or control the contract, which meant, in truth, that a full cargo of sugar and molasses should be carried, packed in the ordinary way (*o*). The charterer is not excused from his contract to load a full cargo, by reason of the ship, owing to sea perils, arriving at the loading port after the export season in the particular trade is over; and the ordinary exception of sea perils in the charter is not applicable to such a case (*p*).

Contracts to
load a cargo.

Where the shipowners had covenanted to deliver the outward cargo, and "having done so" to receive on board a return cargo, and the freighters had covenanted that they would find and provide, "as they did warrant and assure to the shipowners," a full return cargo, it was held that the freighters were liable, on this covenant, for not having furnished a return cargo, although the delivery of the outward cargo was prevented

(*m*) *The General Steam Navigation Company v. Slipper*, 11 C. B., N. S. 493. See also *Strugnell v. Friedrichson*, 12 C. B., N. S. 452.

(*n*) *Mitcheson v. Nicol*, 7 Ex. 929.

(*o*) *Cuthbert v. Cumming*, 10 Ex. 809.

(*p*) *Hurst v. Osborne*, 18 C. B. 144.

by its seizure, without any default of the shipowners, at the outward port where it ought to have been delivered, by persons exercising the authority of Government there (*q*).

Where the shipowners covenanted to proceed to Ichaboe, one of the Guano Islands, and there "to load a full and complete cargo of guano," it was held to be no excuse for the non-performance of this positive contract that no guano was to be found at the island in question (*r*).

Where the charterers contracted to load a cargo of coals on board "with usual despatch," it was held that they were liable for a delay caused by a severe frost, which rendered unnavigable the canal along which the coals were brought (*s*). In cases, however, where it has been provided that a ship shall discharge at a particular place in a port, or wharf, or as near thereto as she can safely get, it has been held that the liability of the charterer to unload does not commence until the vessel arrives at the place named, if the delay in getting to it is occasioned only by the ordinary tides and course of navigation (*t*).

An agent at a foreign port, to whom a ship is addressed for loading under a charter-party, has no implied authority to vary the contract by substituting another and a distant port of loading, or a different description of cargo (*u*).

The remaining incidents which belong directly to the subject of freight are its *recovery*, and *the shipowner's lien in respect of it*.

Under the first of these heads we shall consider the parties liable to pay freight under the usual contracts, and the ordinary remedies for its recovery. RECOVERY OF FREIGHT.

In order to render a person liable to pay freight, there must be an express or implied contract for its payment between him General rules as to party liable.

(*q*) *Storer v. Gordon*, 3 M. & S. 308; and see *post*, Chap. VI., Part II., DEMURRAGE.

(*r*) *Hills v. Sughrue*, 15 M. & W. 253. The charter-party in this case provided also that certain disbursements were to be returned to the charterers "in the event of any unforeseen cause preventing the completion of the charter-party;" but the Court held that this stipulation could not be construed to

mean that the contract by charter-party was to be at an end under circumstances such as those which had happened. See also *Puller v. Stanforth*, 11 East, 232.

(*s*) *Kearon v. Pearson*, 7 H. & N. 386.

(*t*) *Parker v. Winlow*, 7 E. & B. 942; and *Bastifell v. Lloyd*, 1 H. & C. 388.

(*u*) *Sickens v. Irving*, 7 C. B., N. S. 165.

and the shipowner (v). This proposition appears to be self-evident, but it is necessary to state it, because difficulties have arisen in many of the decided cases from its being overlooked. There is no *rule of law* that in this or that case a liability arises to pay freight, it is always a question of *fact* to be decided upon the particular circumstances of each case. And there is no doubt that several contracts may exist simultaneously binding different parties to pay the same freight; for instance, the shipper may be liable on his express contract by charter-party, or on the implied one arising from the shipment, and the indorsee of the bill of lading, or the consignee, receiving the goods under the bill of lading, may, at the same time, be liable on an implied contract arising from such receipt. In these cases there is no transfer of liability. It seems, indeed, to have been at one time supposed that the contract was ambulatory, and that when the goods were delivered the shipper ceased to be liable because his liability was transferred to the party taking the goods, but it is now established that the shipper continues liable on his original contract, and that the person receiving the goods may be liable also, upon a new contract, the consideration for which is the delivery of the goods to him (x).

Effect of receipt of goods under a bill of lading.

As a general rule, the indorsee of a bill of lading is bound by its terms upon receiving the cargo under it. Thus, where by the bills of lading the goods were to be delivered to certain persons or their assigns, "he or they paying freight for the same," it was held, that the demanding and receiving of these goods

(v) See the judgment of Grose, J., in *Ward v. Felton*, 1 East, 513.

(x) See *Christy v. Row*, 1 Taunt. 300; *Shepard v. De Bernales*, 13 East, 565; *Sanders v. Vanzeller*, 4 Q. B. 288; *Kemp v. Clark*, 12 Q. B. 647. There is no doubt that where a cargo is received under a bill of lading, this fact, although not necessarily raising a contract in law, is evidence from which a jury may infer a contract to pay freight in consideration of the captain giving up his lien on the goods, *per Parke, B.*, in *Young v. Moeller*, 5 E. & B. 760. In *Drew v. Bird*, M. & M. 156, it was ruled at Nisi Prius, that where there is no charter-party the shipper is not liable to pay freight if the bills of lading state that it is to be paid by the consignee or

assigns; but this case is not law. See *per Parke, B.*, in *Sanders v. Vanzeller*, *ubi supra*. The 18 & 19 Vict. c. 111, s. 2, which places consignees named in bills of lading, and indorsees to whom the property in the goods has passed by the consignment or indorsement, in the same position as if the contract contained in the bill of lading had been made with themselves, expressly enacts that nothing in the act contained shall prejudice or affect any right to claim freight against the original shipper or owner, or any liability of the consignees or indorsees in consequence of their being such, or of their receipt of the goods, by reason or in consequence of the consignment or indorsement.

from the master by a purchaser and assignee of the bill of lading was *evidence* of a new contract by him to pay the freight, as the ultimate appointee of the shippers for the purpose of delivery (y). So, where goods were shipped in a chartered vessel under bills of lading, which made them deliverable to the shipper's order, or his assigns, "he or they paying freight according to the terms of the charter-party," and the goods were landed at the West India Dock, and the bills of lading were afterwards indorsed by the then holder to the defendants, as his brokers, who received the goods under them, and sold them, accounting to their principal for the proceeds, it was held that they were liable for the freight, although they had paid over the proceeds before it was demanded of them (z). But where the goods were not consigned to the defendant, although it had been intended at one time that this should be done, but to a third person, to whose order the bills of lading were made, and one of these bills, not however indorsed to the defendant, was sent to him in a letter, advising him of the consignment, and requesting him, in case the consignee should not have arrived at the port of discharge, to do the best that he could for the shippers, upon which the defendant, (acting as agent for the consignee in his absence,) caused the goods which were damaged to be landed at the King's warehouse, in compliance with the requisitions of an act of Parliament, and entered them at the Custom House in his own name to prevent their seizure, it was held that this was not an acceptance from which a contract to pay the freight could be implied (a). So, where the bills of lading made the cargo deliverable to the consignees or their assigns, "he or they paying freight for the same," and they indorsed them to the defendants, their brokers, who were largely in advance to them, and the defendants entered the goods at the Custom House in their own names, but landed them at the docks in the names of the consignees, and afterwards obtained possession of the goods, not under the bills, but under a delivery order from

(y) *Cock v. Taylor*, 13 East, 399; see also *Roberts v. Holt*, 2 Show. 443; *Stindt v. Roberts*, 5 D. & L. 460; *S. C.* 17 L. J., Q. B. 166, and the observations on this case by Parke, B., in *Young v. Moeller*, 5 E. & B. 760; *Artaza v. Smallpiece*, 1 Esp. 23, is apparently not law.

(z) *Bell v. Kymer*, 5 Taunt. 477; and see *Pindar v. Wilks*, *ib.* 612, and *Dougal*

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v. Kemble, 3 Bing. 383. Where the facts are sufficient to raise an implied promise to pay freight on receipt of the goods, it appears to be immaterial that the bill of lading is for delivery to the consignees, omitting the words "or their assigns." See *Renteria v. Ruding*, M. & M. 511.

(a) *Ward v. Felton*, 1 East, 506.

the consignees for that purpose, it was held that these facts alone did not raise any implied promise by the defendants to pay the freight. As it appeared, however, that the defendants had on former occasions obtained the delivery of other goods under similar orders from the same consignees, and had always paid the freight, the Court said that the jury was justified in implying from this fact a liability on their part (*b*). Where, by a charter-party under seal, a ship was chartered on a voyage out and home for a specified time at a certain rate of payment on the homeward cargo, in full for the hire of the ship, to be paid partly in advance, and partly by bills to be given on the return of the ship, and the bills of lading stated that the goods were to be delivered to a consignee named in them, or his assigns, "he or they paying freight as per charter-party," and one of the bills was indorsed for a valuable consideration to the defendants, to whose order the goods were delivered, after they had been transferred in the books of the Dock Company, and entered at the Custom House, and landed, and warehoused in their names, the Court held, upon a case stated for their opinion, that they were not liable to pay the freight (*c*).

And upon the same principle where a consignee, not the owner of the goods, received them under a bill of lading, by which they were to be delivered to him or his assigns, "paying freight for the same, with primage and average accustomed," but which did not mention *general* average, the Court refused to imply any promise by him to pay general average, which is usually a charge on the owner of the goods; even although the defendant had notice before he received the goods that they had become subject to it (*d*).

Where a cargo was accepted by the indorsee of a bill of lading under which the goods were deliverable to order, "against payment of the agreed freight and other conditions as per charter-party," it was held that these were circumstances from which the jury might imply a contract on his part to pay the demurrage stipulated for in the charter-party, notwithstanding

(*b*) *Wilson v. Kymer*, 1 M. & S. 157. It is observable that in this case the whole ship was let to the consignees by the charter-party, and the shipowners had proved against them on their bankruptcy for freight under the charter-party.

(*c*) *Moorsom v. Kymer*, 2 M. & S. 303.

This case was decided in some degree upon the ground that there was a remedy for the same freight against the charterer; but it appears to be clear now that this is not material. See *ante*, p. 288.

(*d*) *Scotfe v. Tobin*, 3 B. & Ad. 523.

his refusal, at the time of receiving the goods, to pay the demurrage (*e*). It must be observed, however, that the words used in the bill of lading in this case were peculiar, and that the demurrage accrued from the delay of the holder of the bill of lading himself, at the port of discharge; and in a later case it was held, that the consignee of a bill of lading which makes the goods deliverable to him or assigns, "paying freight for the said goods as per charter-party," does not by taking the goods at the destination make himself liable to pay demurrage in the port of loading, according to the rate stipulated in the charter-party, although there be an express stipulation for a lien on the goods for such demurrage (*f*). In a later case a cargo was shipped for London under a charter-party, by which the charterer contracted to pay a certain freight, and it was provided that he should have a fixed number of days for loading and unloading, and that he should pay so much per day for any detention of the ship beyond that period. A bill of lading made the cargo deliverable to the consignees in London, or order, "he or they paying freight as per charter-party;" and in the margin was written "there are eight working days for unloading in London." The vessel was detained some days beyond the eight. The consignees having received the cargo, and paid the freight, but having refused to pay demurrage, it was held that there was nothing in this marginal statement, or in the receipt of the cargo, which imposed upon them any liability to pay demurrage (*g*).

Where a bill of lading expressed that the goods were deliverable to order or assigns, "he or they paying freight for the said goods, five-eighths of a penny sterling per pound, with five per cent. primage and average accustomed," and by the usual custom at the port of delivery three months' interest or discount was deducted from freights payable under bills of lading, on goods such as those in question, it was held that the assignee of the bill of lading who had received the goods was only liable to pay the freight, less the discount, and that the custom was binding, and did not contradict the bill of lading (*h*).

(*e*) *Wegener v. Smith*, 15 C. B. 285.

(*f*) *Smith v. Sieveking*, 4 E. & B. 945; 5 E. & B. 589.

(*g*) *Chappel v. Comfort*, 10 C. B., N.S. 802.

(*h*) *Browne v. Byrne*, 3 E. & B. 703; *Moeller v. Young*, 5 E. & B. 755, in the Exchequer Chamber, reversing the decision of the Court of Queen's Bench; see 5 E. & B. 7.

Where goods were shipped by merchants at Bombay, and by the bills of lading were to be delivered "unto order, or to his or their assigns on paying freight for the said goods," and the bills were indorsed and forwarded to the defendants in London, who indorsed them in blank to their factors, who received the goods under the bills but without paying the freight, and were debited with the amount by the shipowner, who did not know that they were only agents, and afterwards they became bankrupt, upon which the defendants obtained the goods from them, it was held, that there was no implied contract by the defendants to pay freight to the shipowner, although the bills of lading had been indorsed without consideration to the factors as agents only for the defendants, and the goods, at the time of the delivery to the factors, were the property of the defendants; for it was considered, that as the agents were the only actual indorsees and holders of the bills, and the shipowner did not require payment before the delivery of the goods, he must be taken to have given credit to them alone, and that there was nothing to show that the defendants had given any authority to their agents to pledge their credit for the freight. To the objection that it would be unjust that the defendants should receive their goods without paying any freight, the Court answered that it was the voluntary act of the shipowner to give credit to the factors, and that if he was indebted to them to the amount of the freight, the freight would be set off against the debt, and then that the assignees of the bankrupt factors might recover the full amount of the freight against the defendants, subject to any cross demand (i). So, no promise to pay freight will be implied when, on the face of the bill of lading, the person who receives the goods is merely agent for the consignees; as where the goods were deliverable to "A. B. (the defendant) for the London Gas Company, he or they paying freight;" the promise to be inferred from the receipt of goods under such a bill of lading being, *primâ facie*, a promise as agent only to pay the freight on account of the company (j). And from the fact of the receipt of goods under a bill of lading which makes them deliverable on payment of freight as per charter-party, no contract can be implied on the part of the assignee of the bill of lading to unload

(i) *Tobin v. Crawford*, 5 M. & W. 225; S. C. in Cam. Scacc. 9 M. & W. 716.

(j) *Amos v. Temperley*, 8 M. & W.

798; and see the observations on this case in Story on Agency, p. 348, note (3), 3rd ed.

the vessel in a reasonable time, although the charter provides for payment of demurrage after a certain number of lay days (*k*).

In all these cases, whether the bills of lading refer to a charter-party or not, no contract is implied *by law* from the facts. There is no such implication even where a bill of lading specifies that the goods are to be delivered by the shipowner to the consignee or his assigns, he or they paying a certain specified sum for freight, without any reference to a charter-party, and the goods are received by an indorsee by virtue of such a bill; although there is *evidence* in this case to warrant a jury in finding such a contract, and it has been so much the practice for the indorsee of such a bill of lading to pay the specified freight if he accept the goods under it, that there is little or no doubt that a jury would, on such a question, find in favour of the shipowner, if the indorsee received the goods without a disclaimer of his liability. But there is no authority for saying that, under such circumstances, there is a contract raised by law to pay the freight which another, namely, the consignor, has contracted with the shipowner to pay. And it is clear that the contract does not (except in cases in which the 18 & 19 Vict. c. 111, is applicable) run with the property in the goods. If there is any liability in the indorsee of the bill of lading by reason of the receipt of the cargo under it, it is on a new original contract, the consideration for which is the delivery of the goods to him (*l*). Where there is no bill of lading the consignee is not usually liable, but prior payments of freight by him on former occasions of a similar kind are reasonable evidence, even in this case, to show that on the receipt of the goods he contracts to pay the freight (*m*).

It is now well settled that the usual clause in bills of lading engaging the master to deliver the goods to the consignees or assignees, "he or they paying freight," is introduced for the benefit of the master only, and does not cast upon him the duty of obtaining at his peril the freight from the consignees at the time of the delivery. The consignor still remains liable for the freight on his express contract in the charter-party, or on his implied undertaking arising from the shipment, although the

Effect on remedy against shipper of taking a bill from the consignee.

(*k*) *Young v. Moeller*, 5 E. & B. 755.

(*l*) See for these positions the judgment of Tindal, C. J., in *Sanders v. Vanzeller*, 4 Q. B. 295, *Zwischenbart v.*

Henderson, 9 Ex. 722, and the cases cited *ante*, p. 288, note (*x*).

(*m*) *Coleman v. Lambert*, 5 M. & W. 502.

goods have been delivered to the consignee without obtaining the freight, unless there has been what amounts in substance to payment by the consignee. Thus, where cash has been offered, but the master has elected to take from the consignee a bill of exchange which is afterwards dishonoured, the remedy against the consignor is lost (*n*). The mere taking of a bill from the consignee, however, does not affect the remedy against the consignor, unless there has been an option to take either a bill or cash, and the master has, for his convenience, preferred the former (*o*).

LIEN FOR FREIGHT.

We will conclude this portion of the Chapter by considering the shipowner's *lien for freight*,—a right which exists without any express stipulation, but which has a material bearing on the contract of affreightment.

The shipowner has, independently of contract, a lien on the goods actually carried for the freight due in respect of them (*p*). He has also a lien on the cargo for any sum which by the charter-party is to be paid for the hire of the ship, although it may have no relation to the quantity of goods actually carried, but is calculated only on the tonnage of the vessel (*q*). He has, however, no lien either at law or in equity, in respect of breaches of covenants in the charter-party other than those relating to the payment of freight for goods actually carried (*r*). No lien, therefore, exists, in the absence of express stipulation, for dead freight, demurrage (*s*), wharfage (*t*), or port charges (*u*).

The general rule is as stated above, but it often happens that the effect of the particular contract of carriage which the parties have entered into is to deprive the owners of this right, owing

(*n*) *Tapley v. Martens*, 8 T. R. 451; *Christy v. Row*, 1 Taunt. 300; *Shepard v. De Bernales*, 13 East, 565; *Dommett v. Beckford*, 5 B. & Ad. 521; *Tobin v. Crawford*, 5 M. & W. 235; 9 M. & W. 716.

(*o*) *Marsh v. Pedder*, 4 Camp. 257. In *Strong v. Hart*, 6 B. & C. 160, there was no evidence that cash had been tendered, yet it was held that the jury was properly directed that the consignor was discharged if the master took the bill voluntarily and for his own convenience. See also *Anderson v. Hillies*, 12 C. B. 499.

(*p*) It has been held that there is a

lien on every part of the merchandize belonging to the same person and under the same consignment, for the freight of the whole. *Sodergreen v. Flight*, cited 6 East, 622.

(*q*) *Campion v. Colville*, 3 B. N. C. 17; *Neish v. Graham*, 8 E. & B. 505.

(*r*) *Birley v. Gladstone*, 3 M. & S. 205; *Gladstone v. Birley*, 2 Mer. 401; *Faith v. East India Company*, 4 B. & A. 630.

(*s*) *Phillips v. Rodie*, 15 East, 547.

(*t*) *Bishop v. Ware*, 3 Camp. 360.

(*u*) *Faith v. East India Company*, *ubi supra*.

to the terms of the contract being inconsistent with it. Questions of considerable nicety have arisen on this point.

Thus, there is usually no lien for freight which has not become due at the time when the goods are to be delivered. It was accordingly held that no question of lien could arise where the contract made between the shipper of the goods and the shipowner was that a gross sum for the use of the ship was to be paid within a certain period after she had cleared from the Custom House, and the shipper had insisted (there being nothing in the charter-party to prevent him) on taking out the cargo before the ship sailed (*x*). And where by a charter-party the ship was to deliver her cargo "on being paid freight" at a certain rate, but by a subsequent clause it was agreed that the freight was to be paid "on unloading and right delivery of the cargo, in cash, two months after the vessel's inward report," it was held, that taking these stipulations together, the intention was that the freight was not to be paid until two months after the inward report, and that the shipowner had therefore no lien (*y*). So where the freight is payable by the bill of lading according to the charter-party, and the charter-party fixes a certain period after the delivery of the goods for the payment, there is no lien (*z*). Where good and approved bills were to be given in payment of the freight, and the shipowner took a bill in payment, and although he objected to it at the time, he afterwards negotiated it, he was held to have relinquished his lien (*a*). But where a tonnage freight was payable partly during the voyage, and the remainder by bills at two and four months from the day on which the ship should arrive in the Thames on her return, and there was a provision in the charter-party that the ship should after her arrival take her regular turn for delivery in the Docks, the Court held that the intention of the parties obviously was that the bills should be delivered before the

Loss of lien
by reason of
particular
contracts.

(*x*) *Thompson v. Small*, 1 C. B. 328. A person who has shipped goods on a general ship cannot, however, demand them back at pleasure without payment of freight; although, by the usage of trade, the merchant may under ordinary circumstances re-demand the goods a reasonable time before the ship sails, on paying the freight which would become due, and indemnifying the master against the consequences of any bills of

lading signed for the goods. See *Tindall v. Taylor*, 4 E. & B. 219.

(*y*) *Alsager v. St. Katharine's Dock Company*, 14 M. & W. 794.

(*z*) Admitted in *Lucas v. Nockells*, 4 Bing. 729; see as to the analogous case of a shipwright who has worked on credit, *ante*, p. 68.

(*a*) *Horncastle v. Farran*, 3 B. & Ald. 497.

cargo, and that as they had never been delivered, the lien still existed (*b*).

As possession is necessary to a lien, it follows that where the owner absolutely demises the ship, and thus parts with the possession of her, and of her cargo, he can have no lien for her earnings. On this account it often becomes material to consider the construction of the charter-party; and the real question in these cases always is, whether it was the intention of the parties that the owner should part with the control over the ship for a given time, or whether the contract was the ordinary one under which the constructive possession of the ship is preserved? In each case the whole contract contained in the charter-party must be taken together (*c*), and the result will depend upon the particular expressions used. It is now, however, necessary, that strong and distinct terms should be used before the Courts will put a construction upon the agreement which will deprive the shipowner of his lien. In the earlier cases, the use of express terms of demise was held to afford a nearly decisive criterion of the intention to part with the possession of the ship (*d*). But in some of the later cases the owner's lien has been supported, notwithstanding the existence of such expressions, where in the other parts of the contract language inconsistent with that intention was found. Such, for instance, as stipulations showing that the payment of the hire was to be either precedent to, or concomitant with, the delivery of the goods (*e*); or providing expressly for the preservation of the lien (*f*).

The mere use, therefore, of words of demise, although often material, does not necessarily show that the intention of the owner is to transfer the actual possession of the ship; and, on

(*b*) *Campion v. Colvin*, 3 B. N. C. 17. As to what terms introduced into the bill of lading will amount to a waiver of the lien as against the consignee, see *Gilkison v. Middleton*, 2 C. B., N. S. 184, *Neish v. Graham*, 8 E. & B. 505, and *Kirchner v. Venus*, 12 Moo. P. C. C. 361, where these cases were disapproved of. See also *post*, p. 298.

(*c*) *Soares v. Thornton*, 7 Taunt. 627; *Newberry v. Colvin*, 7 Bing. 190; *S. C.* 1 Cl. & F. 283; *Belcher v. Capper*, 4 M. & Gr. 502; *Dean v. Hogg*, 10 Bing. 345; see also *post*, Chap. VI., Part II., STOPPAGE IN TRANSITU.

(*d*) See the judgment of Tindal, C. J.,

in *Belcher v. Capper*, 4 M. & Gr. 541; *Hutton v. Bragg*, 7 Taunt. 14; *Saville v. Campion*, 2 B. & A. 503.

(*e*) *Birley v. Gladstone*, 3 M. & S. 205; *Tate v. Meek*, 8 Taunt. 280; *Yates v. Meynell*, *ib.* 302; *Yates v. Railston*, *ib.* 293; *Faith v. East India Company*, 4 B. & A. 630; *Christie v. Lewis*, 2 B. & B. 410.

(*f*) *Small v. Moates*, 9 Bing. 574. If such a provision is inserted, the lien is preserved, although the effect of the contract may be to vest the possession in the charterer. *S. C.* See also *Gledistanes v. Allen*, 12 C. B. 202, and the cases cited, *post*, p. 298.

the other hand, the charter-party may have this effect, although no words of demise have been used (*g*). The fact of the owners appointing the master does not afford a strong presumption that they intend to retain possession of the vessel; for it is an almost invariable usage for the owners themselves, although they let out the ship upon freight to a charterer, to appoint the captain and crew; since the chartering of a vessel is not so much the chartering of the hull, as of a ship in a state fit for the purposes of mercantile adventure (*h*). Where a ship was chartered to the commissioners of the transport service on behalf of the Crown, the owners providing the master and crew, but the terms of the charter-party showed that the whole use of the ship was to be vested in the Crown, and that the owners were not to interfere with it, it was held, that, looking at the terms of the charter-party, coupled with the whole nature of the service, a temporary ownership passed to the Crown (*i*).

Where, as is not now uncommon, a ship is chartered at a lump sum, and it is intended that she shall be put up by the charterers as a general ship (the master and crew being still employed and paid by the owners) and the charter-party provides that the master shall sign bills of lading at such rates of freight as the charterers may direct, without prejudice to the charter, it is a question of difficulty, and upon which a difference of opinion has prevailed, whether the master acts, in signing the bills of lading, as the agent of the charterers or of the owner. According to the view which has been taken by the Court of Queen's Bench in some cases he acts on these occasions as the agent of the charterers (*j*). But, whether this be so or not, the shipowner's lien against the charterers for the charter freight, and against the indorsees of the bills of lading for the bill of lading freight, is not taken away (*k*). Where, however, a bill of lading of goods shipped for Sydney, stated in the margin that the freight was to be paid at the port of shipment at or within a certain time from the sailing of the ship, the vessel

(*g*) *Newberry v. Colvin*, 7 Bing. 190.

(*h*) See the judgment in *Newberry v. Colvin*, *ubi supra*.

(*i*) *The Trinity House v. Clark*, 4 M. & S. 228. See further as to what terms show an intention to part with the possession of the ship, *Fletcher v. Braddick*, 2 N. R. 182; *Parish v. Crawford*, 2 Str. 1251; *Vallejo v. Wheeler*, 1 Cowp. 143; *Dean v. Hogg*, 10 Bing. 351; *Reeve v.*

Davis, 1 A. & E. 312; *Fenton v. Dublin Steam Packet Company*, 8 A. & E. 835; and *post*, Chap. IX., COLLISION.

(*j*) See *Marquand v. Banner*, 6 E. & B. 232; the judgment in *Schuster v. McKellar*, 7 E. & B. 704; *Gilkison v. Middleton*, 2 C. B., N. S. 134; and *Neish v. Graham*, 8 E. & B. 565.

(*k*) See the cases cited in the last note.

lost or not lost, it was held in the Privy Council that this sum, although called freight, was really only money paid for taking the goods on board and undertaking to carry them, and that the shipowner had no right of lien in respect of the goods, by reason of the money being unpaid; but that the master was bound to deliver them to the assignee of the bill of lading, although they were deliverable by its terms to the shipper's order or assigns, "he or they paying freight for the goods as per margin" (l).

The lien is not lost by the forcible removal of the master after a capture of the ship; thus, where a ship was captured and the master was taken out, and afterwards she was recaptured, it was held that this removal from possession made no difference, and that the shipowner received the ship on her arrival as trustee for the master, and consequently that his lien for freight still existed (m).

To what goods
it extends.

Where a sum, regulated by the tonnage of the ship, was payable by the charterer for her use, it was considered that the lien was not confined to the charterer's goods, but that it extended also over goods consigned to others (n). Where goods were put on board, which had been purchased on account of the charterer, but as he was indebted to the persons who shipped them they were consigned to the agents of the shippers, it was held, that as between the owner of the ship and the agents, the goods must be considered as the goods of the charterer, and liable to his lien for the freight due under the charter-party (o).

For what
amount of
freight it ex-
ists.

This lien exists as against sub-freighters to the extent of the freight they have contracted to pay, although the ship be employed by the freighter as a general ship; but where the bills of lading mention a less rate of freight than the charter-party the owner can only retain the goods, as against sub-freighters who have no notice of the charter, for the freight named in their bills of lading (p).

(l) *Kirchner v. Venus*, 12 Moo. P. C. C. 361, where *Gilkison v. Middleton* and *Neish v. Graham* were disapproved of so far as these decisions dealt with this question, and the earlier case of *Hew v. Kirchner*, 11 Moo. P. C. C. 21, was upheld.

(m) *Ex parte Cheesman*, 2 Eden, 181.

(n) *Campion v. Colvin*, 3 B. N. C. 17.

(o) *Faith v. East India Company*, 4 B. & A. 630.

(p) *Faith v. East India Company*, *ubi supra*; *Mitchell v. Scalfs*, 4 Camp. 298; *Paul v. Birch*, 2 Atk. 261; see also *Mitchenson v. Begbie*, 6 Bing. 190; *Zwilchenbart v. Henderson*, 9 Ex. 722;

Where, however, the holders of the bills of lading of part of the goods were only the correspondents of the charterers, under advance against the goods, and were not in the position of *bonâ fide* indorsees for value of the bills of lading, and the charter provided for the payment of a lump freight, and that the master might sign bills of lading at any rate of freight without prejudice to the charter, it was held that the shipowners had, against such indorsees, a lien upon the goods represented by the bills of lading for the entire lump freight (*q*). In a recent case, a charter-party was negotiated for a charterer by an agent. The charterer engaged to pay a lump freight for a voyage from London to the coast of Africa and back, "payable on correct delivery of return cargo, in cash, less advances in Africa and two months' discount," and the charter contained also the following stipulation,—"the master to sign bills of lading at any rate of freight, without prejudice to this charter-party." The ship sailed to Africa, discharged her cargo, and afterwards returned to London under the charter. The charterer shipped on the return voyage some oil on his own account for London, for which the master signed a bill of lading, making it deliverable to the agent or assigns, "he or they paying freight for the said goods as usual." The charterer indorsed this bill of lading to the agent in part payment of advances made by him on the purchase of the outward cargo. It was held, under these circumstances, that the agent must stand on the charterer's title, both because he was his agent, and because he had notice of the terms of the charter, and that the shipowner was entitled to a lien on the oil for the entire charter freight (*r*).

It is to be observed, also, that the earlier statutes which, for the convenience of trade, enabled goods to be landed and placed in bonded warehouses, without the payment of customs duty, expressly reserved in these cases the shipowner's right of

Preservation
of lien under
earlier Ware-
housing Acts.

Brown v. North, 8 Ex. 1; *Foster v. Colby*, 3 H. & N. 705; *Gilkison v. Middleton*, 2 C. B., N. S. 134; *Neish v. Graham*, 8 E. & B. 505; *Shand v. Sanderson*, 4 H. & N. 381; and *Santos v. Brice*, 6 H. & N. 290.

(*q*) *Gledstanes v. Allen*, 12 C. B. 202.

(*r*) *Kern v. Deslandes*, 10 C. B., N. S. 205. See also *Shand v. Sanderson*, *ubi supra*; and *Kirchner v. Venus*, 12 Moo. P. C. C. 361. Where a master with-

held a cargo improperly, claiming a sum of money as lump freight and refusing to deduct average, or to give any particulars for apportioning it, it was held in the Court of Admiralty (the vessel having been arrested by the assignee of the bill of lading), that the owners were liable in that Court for the master's breach of duty, under s. 6 of the Admiralty Court Act, 1861, (24 Vict. c. 10). *The Norway*, 10 L. T., N. S. 40.

lien. They provided that when goods were so landed they should continue liable to the same claims for freight as they were subject to whilst on board, and the proprietors of bonded warehouses were directed, upon due notice to them, to detain goods in their possession until the freight due for their carriage was paid, or until a deposit had been made by the owners or consignees of the goods equal in amount to the claim made for freight (*s*).

Lien for freight under the Merchant Shipping Act Amendment Act, 1862.

Some of these enactments have been repealed (*t*) and the Merchant Shipping Act Amendment Act, 1862 (25 & 26 Vict. c. 63), has substituted for them the following important provisions with reference to the delivery of goods and the shipowner's lien for freight.

By sect. 67 of this act it is provided, that where the owner of any goods, imported from foreign parts into the United Kingdom, fails to make entry of them, or land them, or take delivery of them, and to proceed therewith with all convenient speed by the times mentioned in that respect in the act, the shipowner may make entry of and land, or unship the goods, as follows (*u*):—

- (1.) If a time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the time so expressed.
- (2.) If no time for the delivery of the goods is expressed in the charter-party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours (exclusive of a Sunday or holiday), after the report of the ship.
- (3.) If any wharf or warehouse is named in the charter-

(*s*) See the 8 & 9 Vict. c. 91, s. 51; 3 & 4 Will. 4, c. 57, s. 47; 6 Geo. 4, c. 112, s. 45. By the 7 & 8 Vict. c. 31, goods may be carried inland and placed in bonded warehouses at Manchester, subject to the regulations made by the Commissioners of Customs, and to the same conditions as those under which goods were, before this act, placed in other bonded warehouses. See also the 23 & 24 Vict. c. 36, an act to authorize the appointment and approval of places for the warehousing of goods for the security of duties of customs.

(*t*) The M. S. A. Amendment Act, 1862, has repealed s. 51 of the 8 & 9

Vict. c. 91. See s. 2 of the first-mentioned act and the Schedule Table (A).

(*u*) Under this act the word "goods" includes every description of wares and merchandize; the words "owner of goods," include all persons for the time being entitled, either as owners or agents, to the possession of goods, subject, in the case of any lien, to the lien; and the word "shipowner" includes the master of the ship, and any other person authorized to act as agent for the owner, or entitled to receive the freight, demurrage, or other charges payable in respect of the ship. See a 66.

- party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed, and if they can be conveniently received there, the shipowner in landing them, by virtue of these provisions, is bound to cause them to be placed on this wharf or in this warehouse.
- (4.) In other cases the shipowner in landing goods under these provisions must place them on a wharf or in a warehouse where goods of a like nature are usually placed. If the goods, however, are dutiable, the wharf or warehouse must be one duly approved by the Commissioners of Customs for the landing of dutiable goods.
 - (5.) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or to take delivery of them, he may do so, and his entry is then to be preferred to any entry which may have been made by the shipowner.
 - (6.) If any goods are, for the purpose of convenience in assorting them, landed at the wharf where the ship is discharged, and the owner of the goods at the time of the landing has made entry and is ready and offers to take delivery of them and to convey them to another wharf or warehouse, the goods must be assorted at landing, and, if demanded, must be delivered to the owner within twenty-four hours after assortment; and the expense of the landing and assortment must be borne by the shipowner.
 - (7.) If at any time before the goods are landed or unshipped the owner of them has made entry for the landing and warehousing of them at any wharf or warehouse other than that at which the ship is discharging, and has offered and been ready to take delivery of them, and the shipowner has failed to make delivery and has also failed at the time of the offer to give the goods owner correct information of the time at which the goods can be delivered, then the shipowner is bound, before landing or unshipping the goods, to give to the owner of the goods, or of the wharf or warehouse, twenty-four hours' notice in writing of his readiness to deliver the goods, and, if he lands or unships them without

such a notice, he must do so at his own risk and expense (v).

By sect. 68 of the Merchant Shipping Act Amendment Act, 1862, it is also provided, that if when any goods are landed from any ship and placed in the custody of any wharf or warehouse owner, the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight, or other charges, payable to the shipowner, to an amount to be mentioned in the notice, the goods so landed shall, in the hands of the wharf or warehouse owner, continue liable to the same lien, if any, for such charges as they were subject to before the landing; and the wharf or warehouse owner must retain them until this lien is discharged, and if he fails so to do, must make good to the shipowner any loss thereby occasioned to him.

By sect. 69 it is provided, that upon the production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to him of a copy of it, or of a release of freight from the shipowner, the lien is to be discharged.

By sect. 70 the lien may also be discharged by the owner of the goods, if he deposits with the wharf or warehouse owner a sum equal to the amount claimed by the shipowner; but this is not to prejudice any other remedy which the shipowner may have for the recovery of the freight.

By sect. 71, if the person making such deposit does not, within fifteen days after making it, give to the wharf or warehouse owner notice in writing to retain it, stating in the notice the sum, if any, which he admits to be payable to the shipowner, or that he does not admit any sum to be due, the wharf or warehouse owner may, at the expiration of the fifteen days, pay over the sum so deposited to the shipowner, and by this payment he is discharged from all liability.

By sect. 72, if the depositor duly gives such a notice as is required by the statute, the wharf or warehouse owner is bound immediately to apprise the shipowner of it, and to pay or tender to him, out of the sum deposited, the amount admitted to be payable. He must retain the balance, or, if no sum is ad-

(v) The word "wharf" includes all wharves, quays, docks and premises upon which goods, when landed from ships, may be lawfully placed. The word "warehouse" has a meaning

equally wide. The expressions "wharf owner" and "warehouse owner," mean the occupiers of wharves or warehouses. See s. 66.

mitted to be payable, the whole sum deposited, for thirty days from the date of the notice, and at the expiration of that period he may pay over the money in his hand to the goods owner, unless legal proceedings have been in the meantime instituted by the shipowner against the goods owner, and notice in writing of them has been served on the wharf or warehouse owner.

By sect. 73, if the lien is not discharged, and no deposit is made, the wharf or warehouse owner may, and, if required by the shipowner, must, at the expiration of ninety days from the time when the goods were placed in his custody (or, if the goods are of a perishable nature, at such earlier period as he in his discretion may think fit) sell the goods for home use or exportation, or so much of them as may be necessary to satisfy the charges sanctioned by the act. This sale must be by public auction.

By sect. 74, before the sale the wharf or warehouse owner must give notice of it by advertisement in two newspapers circulating in the neighbourhood, or in a daily newspaper published in London and in a local newspaper, and if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the wharf or warehouse owner, or is otherwise known to him, he is bound to give notice of the sale to the goods owner by letter sent by post; but the title of a *bonâ fide* purchaser is not invalidated by the omission to send notice, nor is any purchaser bound to inquire whether notice has been sent.

By sect. 75, in all cases of sale the wharf or warehouse owner must apply the money received from the sale as follows, and in the following order:

1. If the goods are sold for home use, in payment of any customs or excise duties owing in respect of them:
2. In payment of the expenses of the sale:
3. In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the goods:
4. In payment of the amount claimed by the shipowner as due for freight, or other charges, in respect of the goods:
5. But in case of any agreement between the wharf or

warehouse owner and the shipowner concerning the priority of their charges, then these charges shall have priority according to the terms of the agreement: and the surplus, if any, must be paid to the owner of the goods.

By sect. 76 of the Merchant Shipping Act Amendment Act, 1862, whenever goods are placed in the custody of a wharf or warehouse owner under the authority of the statute, the wharf or warehouse owner is entitled to rent in respect of them; he is also entitled from time to time, at the expense of the goods owner, to do all such reasonable acts as in the judgment of the wharf or warehouse owner are necessary for the proper custody and preservation of the goods, and he is entitled to a lien on the goods for the rent and expenses.

By sect. 77 it is provided, that nothing in the act is to compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if the statute had not passed; nor is he bound to see to the validity of any lien claimed by any shipowner under the act.

And, in sect. 78 is contained a general provision, that nothing in the act contained is to take away or abridge any powers given by local acts to harbour trusts, bodies corporate and persons, by which they are enabled to expedite the discharge of ships or the landing or delivery of goods.

Nor are the rights or remedies given by any local act to any shipowner or wharf or warehouse owner to be taken away or abridged.

CHAPTER VI.

CONTRACT OF AFFREIGHTMENT AND ITS INCIDENTS.

PART II.

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DEMURRAGE is the sum which is fixed by the contract of carriage as a remuneration to the shipowner for the detention of the ship beyond the number of days allowed for loading or unloading. The amount is usually calculated at so much per day; and the number of days during which the ship may be detained on demurrage is also generally limited by the contract (a). When the ship is detained by the freighter beyond

(a) 1 Beawes Lex Merc. 197; Smith Merc. Law, 271. The delay itself is also sometimes called demurrage.

the days of demurrage, a claim of the same nature arises for damages for the subsequent detention, and the rate which is agreed upon for the demurrage becomes *prima facie*, but not necessarily, the measure of this compensation (*b*).

Construction of contract.

The contract for demurrage is to be construed like any other mercantile contract, and the parties may introduce into it special stipulations. The following general rules, however, are applicable to it where they are not interfered with by its special terms.

General rules as to its payment.

Demurrage ceases on the day of sailing from the port of loading; and if the ship afterwards puts back, owing to contrary winds, and is detained in port by frost or bad weather, the freighter is not liable (*c*). Nor is he liable if the ship, *after she is loaded*, is detained by frost, or by any act of the shipowner; but he is liable for any detention for the purpose of loading, although the loading may have been rendered impossible by the state of the weather (*d*). Where the ship is to be unloaded in the usual and customary time (and if no particular time is mentioned this is the contract which the law implies), the freighter is not liable to pay for a detention caused merely by the crowded state of the docks (*e*). Where, however, the freighters are bound by the charter-party to load a cargo in the customary manner, no time being mentioned, this means that they will load according to the usage of the port, and within a reasonable time, without reference to unforeseen casualties; and if the loading is delayed beyond a reasonable time, the freighters are not excused by reason of the delay having arisen from difficulties over which they have no control (*f*). And where the parties enter into a positive contract that the goods shall be taken out of the ship within a certain number of days from her arrival, this contract

(*b*) *Randall v. Lynch*, 12 East, 179; *Moorson v. Bell*, 2 Camp. 616. The declaration must be special if the claim is for damages for the subsequent detention. *Horn v. Bensusan*, 9 C. & P. 709. See as to demurrage when the delivery of the outward cargo is prevented, and the ship returns with it to the port of loading, *Christy v. Row*, 1 Taunt. 300.

(*c*) *Jamieson v. Laurie*, 6 Bro. Parl. C. 474.

(*d*) *Barrett v. Dutton*, 4 Camp. 333; *Pringle v. Mollett*, 6 M. & W. 80; *Furnell v. Thomas*, 5 Bing. 188; see also *Kearon v. Pearson*, 7 H. & N. 386; and *ante*, p. 244.

(*e*) *Rodgers v. Forresters*, 2 Camp. 483; *Burmester v. Hodgson*, *ib.* 488.

(*f*) *Adams v. The Royal Mail Steam Packet Company*, 5 C. B., N. S. 492; and see *Harris v. Dreesman*, 23 L. J., Exch. 210.

must be construed strictly, and demurrage becomes payable for any delay beyond the period fixed upon, which is not owing to the default of the shipowner; even although it may be caused by an accident or impediment over which the freighter has no control; as, for instance, by the necessity for the removal of superincumbent goods (*g*), by the crowded state of the docks (*h*), or by custom house or government restraints or regulations (*i*); and this has been held to be so even although no notice of the ship's arrival has been given to the consignees, or to the indorsees of the bill of lading (*k*). For, although this rule may appear to operate harshly as against the consignees, they might have protected themselves by express stipulation. Where the delay in unloading is occasioned by an improper interruption by the shipowner, the above rule does not apply, since in such a case the detention is the act of the owner and not of the freighter; but it is not every interference, for however short a time, that will put an end to the obligation of the charterer (*l*).

Delays caused
by superincum-
bent goods, &c.

It has been held, that in computing the number of lay days Sundays are to be included, unless working days are expressly mentioned, or there be any custom to the contrary (*m*). In one case the jury was satisfied that such a custom existed in London (*n*). The days of demurrage are to be reckoned, not from the arrival in port, but from the arrival at the ordinary place of discharge, according to the usage of the port (*o*). This does not, however, mean the actual place of unloading, for the days begin to run if the ship is in the dock where the discharge is

Mode of com-
puting days.

(*g*) *Harman v. Gandolphi*, Holt, N. P. C. 35; *Leer v. Yates*, 3 Taunt. 387; *Taylor v. Clay*, 9 Q. B. 713; and see the judgment of Parke, B., in *Kell v. Anderson*, 10 M. & W. 502; the judgments in the Exchequer Chamber in *Ericksen v. Barkworth*, 3 H. & N. 894, and the same case in the Court below, *ib.* 601. It is apprehended that the rule laid down in the text is the true one, and that the cases cited above are correctly decided, although Lord Tenterden, in *Dobson v. Droop*, 4 C. & P. 112, ruled differently. It appears to be in all cases a question of construction of the contract as appearing on the charter-party and bill of lading. Possibly in the last-mentioned case (as in *Rogers v. Hunter*, 2 C. & P. 601), the word "detention" may have been used; from which it may have been inferred that

demurrage was to be payable only so long as the ship was wilfully detained by the freighter. The insertion of a few words in the charter-party or bill of lading would get rid of all difficulty in this respect.

(*h*) *Randall v. Lynch*, 2 Camp. 352.

(*i*) *Blight v. Page*, 3 B. & P. 295, note (*a*); *Bessey v. Evans*, 4 Camp. 131; *Hill v. Idle*, *ib.* 327.

(*k*) *Harman v. Clarke*, 4 Camp. 159; *Harman v. Mant*, *ib.* 161.

(*l*) *Benson v. Blunt*, 1 Q. B. 870.

(*m*) *Brown v. Johnson*, 10 M. & W. 331; and *Nieman v. Moss*, 29 L. J., Q. B. 206.

(*n*) *Cochran v. Retberg*, 3 Esp. 121.

(*o*) *Brereton v. Chapman*, 7 Bing. 559; *Kell v. Anderson*, 10 M. & W. 498.

to take place, although, owing to the crowded state of the dock, she cannot reach a berth for the purpose of being discharged (*p*).

Where a ship was to sail with convoy, and demurrage was to be paid for every day beyond a certain number of days that she should "wait for convoy," this was construed to mean that it was to be paid until the convoy was ready to sail, and not that the freighter was to be discharged on the arrival of the convoy at the port where the ship lay (*q*).

It will be seen from these cases that the liability depends upon every occasion upon the terms of the particular contract, and that few general rules can be laid down on this subject.

Parties liable
to pay it.

The contract to pay demurrage, which is contained in the charter-party, is made between the shipowners and the freighters (*r*). But where, as is often the case, the bill of lading mentions the demurrage, a consignee who accepts the goods under it may, and generally does, become liable for it on a new contract, to be implied from his acceptance of the goods under these circumstances (*s*).

The implied promise to pay demurrage arising from the receipt of goods under a bill of lading making them deliverable on the payment of demurrage, may even arise although the receiver of the goods states at the time that he does not intend to pay it (*t*). Where a cargo was received by an indorsee of a bill of lading, which made the goods deliverable "*against payment of the agreed freight and other conditions, as per charter-party*," it was held that the jury might infer from these circumstances a contract to pay the demurrage stipulated for by the charter-party (*u*). But it will be observed that, in this case, the wording of the bill of lading was pecu-

(*p*) *Brown v. Johnson*, 10 M. & W. 331. The lay days do not, however, begin to run where the ship having entered a tidal harbour is prevented for some time, by the ordinary course of the tides, from getting to the place of discharge; *Parker v. Winlow*, 7 E. & B. 942; and *Bastifell v. Lloyd*, 1 H. & C. 388.
(*q*) *Launoy v. Werry*, 4 Bro. Parl. C. 630.

(*r*) Where a charterer contracted as

agent, and stipulated that his liability should cease when the cargo was shipped, it was held that he was not liable for demurrage at the port of discharge; *Oglesby v. Yglesias*, E., B. & E. 930.

(*s*) *Harman v. Gandolphi*, Holt, N. P. C. 35; *Harman v. Mant*, 4 Camp. 164; and see *ante*, p. 290.

(*t*) *Wegener v. Smith*, 15 C. B. 285; *Smith v. Sieveking*, 4 E. & B. 945.

(*u*) *Wegener v. Smith*, *ubi supra*.

Mar, and it also appeared that the demurrage had accrued by reason of the delay of the indorsee of the bill of lading himself, at the port of discharge. In a later case, where the words of the bill of lading, under which the goods were received, were "paying for the said goods as per charter-party," the Exchequer Chamber distinctly recognized the rule, that the indorsee of a bill of lading so framed does not, by receiving the goods at their destination, make himself liable to pay for demurrage at the port of loading according to the rate stipulated in the charter-party; although there be in the charter an express stipulation for a lien on the goods for such demurrage (*v*). And where a cargo was shipped under a charter-party by which the charterer was to have a certain number of days for loading and unloading, after which demurrage was to be paid, and the cargo was received by consignees under a bill of lading which contained the words "he or they paying freight as per charter-party," and in the margin "there are eight working days for unloading," it was held that the consignees were not liable for demurrage, although the vessel was detained beyond the time mentioned (*w*).

The master cannot sue for demurrage in his own name unless it is mentioned in the bill of lading (*x*).

Stoppage *in transitu* is a subject which belongs properly to the general mercantile law; but as questions arising out of this right often render it difficult for shipowners and masters to ascertain to whom goods are to be delivered, it is necessary to notice shortly the principles by which this right is regulated.

STOPPAGE IN
TRANSITU.

Stoppage *in transitu* is the right of the unpaid vendor of goods to stop them, on the bankruptcy or insolvency of the vendee, before they have reached his actual or constructive possession; and to resume the possession, so as to put himself in the same position as if he had not parted with it. The origin of the right is doubtful (*y*); and the effect of its exercise on the contract of

Wherein right
consists.

(*v*) *Smith v. Sieveking*, 4 E. & B. 945, and 5 E. & B. 589.

(*w*) *Chappel v. Comfort*, 10 C. B., N. S. 802; see also *Shadforth v. Cory*, 32 L. J., Q. B. 78; *S. C.*, in Cam. Scacc. *ib.* 379.

(*x*) *Brouncker v. Scott*, 4 Taunt. 1; *Evans v. Forster*, 1 B. & Ad. 118; *Jesson v. Solly*, 4 Taunt. 52, *ante*, p. 82, and the cases cited above. See as to

where the indebitatus count may be used, *Cropton v. Pickernell*, 16 M. & W. 829.

(*y*) See the judgment of Lord Abinger, C. B., in *Gibson v. Carruthers*, 8 M. & W. 321. The first case in which the principle appears to have been acted upon in our Courts is *Wiseman v. Vandeput*, 2 Vern. 203.

sale is not clearly settled (*z*); but it rests obviously on a broad principle of justice, and has consequently been recognized in many of the foreign systems of law (*a*).

The very definition of this right implies that there must be some intermediate agency between the vendor and the vendee; there must be a *transit*,—a passage of the goods from the one to the other,—and this conveyance is generally effected by the agency of a carrier.

How long
transit con-
tinues.

The general rule is, that the *transitus* continues, and that consequently the right of stoppage exists until the goods arrive at the actual or constructive possession of the vendee or consignee, as owner (*b*). In the earlier cases it was considered that nothing but an actual delivery to the consignee would defeat the exercise of the right; but this doctrine has been long abandoned (*c*); and now the question always is, have the goods arrived at the actual destination originally contemplated by the vendee, or have they, in the meantime, come to his actual or constructive possession?

General effect
of delivery to a
carrier.

The carrier being usually a mere agent for the *passage* of the goods, his possession is not in general the constructive possession of the vendee; at least, so far as to interfere with the right of stoppage; even although the vendee may have specially appointed him. And in ordinary cases the transit continues as long as the goods are in the carrier's possession, not only in the actual course of the journey or voyage, but even while they are in a place of deposit connected with their transmission, such as

(*) See *Bloxam v. Sanders*, 4 B. & C. 941; *Clay v. Harrison*, 10 B. & C. 99; and the judgment of Parke, B., in *Wentworth v. Outhwaite*, 10 M. & W. 436. The better opinion is, that it does not rescind the contract. *Ib.*, and see the notes to *Lickbarrow v. Mason*, 1 Smith's L. C. (5th edit.) 729—747. This right arises properly only in cases in which the consignee has become bankrupt or insolvent; but a right of a similar nature may exist in other cases by contract. See *Wilhelmst v. Bowker*, 2 M. & Gr. 792; *S. C.*, 7 M. & Gr. 882; and the judgment in *The Constantia*, 6 Rob. 321. This question is discussed in Smith's Merc. Law, (6th ed.), 554, note (*b*), and the learned author thinks that a general

inability to pay, evidenced by stoppage of payment, is sufficient to satisfy the rule, although there has been no actual insolvency. See further as to this right Paley's P. & A. c. 4, s. 5.

(a) See the judgment in *Gibson v. Carruthers*, 8 M. & W. 321.

(b) See the judgment of Tindal, C. J., in *Jackson v. Nichol*, 5 N. C. 516; *Heinekey v. Earle*, 8 E. & B. 410; and the cases there cited.

(c) *Hunter v. Beale*, cited 3 T. R. 466, where Lord Mansfield used the expression "the goods must have come to the corporal touch of the vendees." But see *Ellis v. Hunt*, 3 T. R. 464; *Dixon v. Baldwin*, 5 East, 176; *Litt v. Cowley*, 7 Taunt. 169.

a warehouse (d). If, however, the vendee take them out of the possession of the carrier before their arrival, whether with or without his consent, there seems to be no doubt that the transit is at an end; although the carrier, in the absence of his consent, might have a right of action against the vendee for so doing. So, there may be a constructive possession by the vendee although the goods are still in the carrier's hands, as where the latter enters expressly, or by implication, into a new agreement, distinct from the original contract for carriage, to hold the goods for the consignee as his agent, not for the purpose of expediting them to the place of original destination pursuant to that contract, but in a new character, for the purpose of custody on his account, and subject to some new order to be given to him (e). A delivery to a carrier selected by the vendor may be sufficient evidence of a delivery to support a count for goods sold and delivered; but it is not enough to satisfy the 17th section of the Statute of Frauds (f).

There are also other acts by which an actual or constructive possession may be taken by the vendee, although the goods have not been delivered at their ultimate destination. Thus, where the vendee, having notice that the goods had arrived at the carrier's warehouse, removed part of them, and left the residue after taking samples, requesting the carrier to allow them to remain in the warehouse for his convenience until he should send further directions, it was held that the transit was determined, as the vendee had by his own act prevented the delivery (g). Where goods were sent by the direction of the vendee to a place at which he did not reside, and when they reached it they were left in a warehouse belonging to third parties, who were wholly unconnected with the carrier, and who had been previously in the habit of receiving goods for the vendee and of holding them at his risk until he fetched them away or gave further orders, without charging him any warehouse rent, it was held that the carrier's duty was complete, and that the goods

Effect on right of interference with the carrier by the vendee.

(d) *Mills v. Ball*, 2 B. & P. 457; *Holst v. Pownal*, 1 Esp. 240; *Hodgson v. Loy*, 7 T. R. 440.

(e) See the judgment in *Whitehead v. Anderson*, 9 M. & W. 534; *Tucker v. Humphrey*, 4 Bing. 516.

(f) *Meradith v. Meigh*, 2 E. & B. 364; *Coombs v. The Bristol and Exeter*

Railway Company, 8 H. & N. 510; and *post*, p. 313. See also as to what is evidence of the acceptance of goods in a warehouse by a purchase, *Castle v. Swooner*, 5 H. & N. 281; S. C., in Cam. Scacc., 6 *ib.* 828.

(g) *Foster v. Frampton*, 6 B. & C. 107.

signed and delivered to A. a bill of lading by which the goods were to be delivered to B. in London, he paying freight; but afterwards A. made an indorsement on the bill that the goods were only to be delivered to B. if he gave security for certain payments; and that otherwise they were to be delivered to A.'s agent. A. then indorsed and delivered the bill to a third person, to whom he was indebted in more than the value of the goods. It was held, that A. had a right to change the destination of the goods before the delivery of them, or of the bill of lading to B., and that the property in them had not passed to B. (t).

Where goods sold in London "free on board," to be paid for on delivery on board by bill or cash at a certain discount, were shipped on a vessel selected by the vendee, and the vendor elected to take a bill, and it appeared that by the custom of the port the expression "free on board" indicated that the vendee was considered as the shipper, although the vendor was to pay the expenses of shipment, it was held that the transit was determined by the delivery on board and receipt of the bill (u).

Of sale of
goods in a
warehouse.

There are also cases in which, although there is no transit, in the ordinary sense of the word, between the vendor and the vendee, yet questions of stoppage may arise. As where goods are sold whilst in the possession of a warehouseman, wharfinger, or other agent, who holds them for the vendor, and the transfer of the possession is merely symbolical.

The general rule is, that if a delivery order is given by the vendor to the vendee, and the agent who holds the goods assents to it by transferring them in his books, or otherwise, (or even it would seem, if he does not assent,) and no acts remain to be done by the vendee which are essential to the completion of the contract, such, for instance, as weighing, measuring, or separating the goods, so as to ascertain their quantity, value, or identity, the right of stoppage is gone (v). The mere giving of a delivery

(t) *Mitchell v. Eds*, 11 A. & E. 888. This was not a case of stoppage in transitu. See also as to the effect of the delivery of goods to a carrier, *Meredith v. Meigh*, 2 E. & B. 364; *Coombs v. The Bristol and Exeter Railway Company*, 3 H. & N. 510; *Heinekey v. Earle*, 8 E. & B. 410.

(u) *Cowasjee v. Thompson*, 5 Moo. P. C. C. 165. See also *Browne v. Hars*,

3 H. & N. 484; *S. C.* in Cam. Scacc., 4 ib. 822; and *Green v. Sichel*, 7 C. B., N. S. 747.

(v) *Withers v. Lys*, Holt, 18; *Zuinger v. Samuda*, ib. 395; *S. C.* 7 Taunt. 265; *Lucas v. Dorrien*, ib. 278; *Hammond v. Anderson*, 1 N. R. 69; *Hanson v. Meyer*, 6 East, 614; *Harman v. Anderson*, 2 Camp. 343; *Swanwick v. Sothorn*, 9 A. & E. 895; *Wood v. Tassell*, 6 Q. B. 234;

order does not operate as a constructive delivery of the goods (x); and it is clear that the transfer of a delivery order has not the peculiar operation of the indorsement of a bill of lading, so as to pass the property in goods which are at sea, and not in the possession of the agent on whom the order is made (y).

It must also be recollected, that the question as between the vendee and the warehouseman or agent, in these cases, is not always the same as that between the vendee and the vendor; for if the agent acknowledges to the vendee that he holds the goods for him, he cannot afterwards set up the right of the vendor to stop them (z). Where, however, goods were sold at Liverpool, and at the time of the sale they were in the warehouse of the vendors, who gave to the vendee a delivery order acknowledging that they held the goods to his order, and evidence was given that by the usage of Liverpool the invariable mode of delivering goods sold while in warehouse was that the vendors should hand delivery orders to the vendees, the Court held that, as between the vendor and the vendee, the right of lien was not divested by the giving of the delivery order (a).

We have already seen that the *bonâ fide* negotiation of the bill of lading, that is to say, the transfer of it by a *bonâ fide* indorsement made by or under the authority of the shipper or consignee to a third person on good consideration, and without notice of the insolvency of the vendee, will defeat the right to stop (b). It is not material that the indorsee knows that the

Of indorsement
of bill of
lading.

Tanner v. Scovell, 14 M. & W. 28; *Lackington v. Atherton*, 7 M. & Gr. 360. If a delivery order is lodged with a warehouse-keeper, and he accepts it, he becomes the agent of the vendee who lodges it, and cannot contest his title or claim a lien on the goods. See the judgment of Lord Campbell, C. J., in *Pearson v. Dawson*, 1 E., B. & E. 456. See also as to what are sufficient acts of appropriation to vest the property of goods in a vendee, *Langton v. Higgins*, 4 H. & N. 402; and *Castle v. Swoorder*, 5 H. & N. 281; *S. C.* in Cam. Scacc., 6 ib. 828.

(z) *McEwan v. Smith*, 2 H. of L. C. 309.

(y) *Akerman v. Humphrey*, 1 C. & P. 53; recognized in *Tucker v. Humphrey*, 4 Bing. 516; and *Jenkyns v. Usborne*, 7 M. & Gr. 678.

(a) *Stonard v. Dunkin*, 2 Camp. 344; *Hawes v. Watson*, 2 B. & C. 540.

(a) *Townley v. Crump*, 4 A. & E. 58.

(b) *Ante*, p. 257; *Lickbarrow v. Mason*, 4 Bro. P. C. C. 57; *S. C.* 5 T. R. 683; *Walley v. Montgomery*, 3 East, 585; *Wilmshurst v. Bowker*, 7 M. & Gr. 882; and the notes to *Lickbarrow v. Mason*, 1 Smith, L. C. (5th edit.) 729. It is to be observed that this peculiar effect of the assignment of a bill of lading does not depend upon the fact that the right of property in the goods passes by the indorsement, but upon the operation of the indorsement to transfer a sort of constructive possession of them. For in the ordinary case of the sale of an ascertained chattel, the property passes by the law of England, by virtue of the bargain only (see *Shep. Touchst.* 224, and the judgment of Parke, J., in *Dixon v. Yates*, 5 B. & Ad. 313), yet the right of stoppage exists if there has been no actual or constructive delivery to the vendee. In some of the cases as to

consignor has not been paid for the goods in money, if he does not know that the consignee is insolvent, or that the bills given are not likely to be paid (*c*). No property, however, passes by the indorsement if there is fraud in the transfer, or if there is notice by the previous indorsement that the earlier transfer is conditional only (*d*); or if the indorsee knows of the insolvency of the consignee (*e*). Nor can the *bonâ fide* indorsee for value interfere, by virtue of the indorsement to him, with the stoppage *in transitu*, if the person through whom the bill of lading came to him had no authority from the shipper or consignee to put it into circulation (*f*). It is expressly provided by the 18 & 19 Vict. c. 111, which transfers to the indorsees of bills of lading the rights and liabilities contained in the contract, that the provisions in the statute are not to affect in any way the right of stoppage *in transitu* (*g*).

Of counter-
mand of de-
livery.

After an indorsement and delivery of the bill of lading and invoice of the goods as a security against bills which are to be drawn by the indorsers of the bill of lading on the indorsees, the indorsers cannot, after they have obtained the acceptances, and whilst the balance of accounts is in the favour of the indorsees, countermand the delivery of the goods; and the master is liable in trover if he acts on such an order (*h*). Where the consignor was at the time of the indorsement of the bill of lading indebted to the consignee on the balance of accounts, including certain bills of exchange accepted by the consignee, it was held, that the consignor had no right to stop the goods upon the insolvency of the consignee before the bills were paid; the Court thinking that, under the circumstances, the consignee was to be considered as a purchaser for a valuable consideration (*i*).

The indorsement of a bill of lading does not become irrevocable immediately on its being made; for although, as between the shipper of the goods and the master, it determines the person to whom, at the time, the former intends that the goods

stoppage *in transitu*, confusion has arisen from the use of expressions implying that the passing of the property is the test as to whether the right to stop is lost.

(*c*) *Cuming v. Brown*, 9 East, 506; *Jones v. Jones*, 8 M. & W. 431.

(*d*) See the cases cited in the last

note, and *Barrow v. Coles*, 3 Camp. 92.

(*e*) *Vertue v. Jewell*, 4 Camp. 31.

(*f*) See the judgment in *Gurney v. Behrend*, 3 E. & B. 622.

(*g*) See s. 2.

(*h*) *Haille v. Smith*, 1 B. & P. 563.

(*i*) *Vertue v. Jewell*, 4 Camp. 31.

should be delivered, the shipper may change his purpose, at any rate before the delivery of the goods, or of the bill to the party who is named in it (*k*). It must be observed, that where the bill of lading is negotiated by way of pledge, it is only the *legal* right to stop that is defeated; for *in equity* the vendor may, by giving notice to the person with whom it is pledged, resume the possession of the goods subject to the specific advance made by the latter upon them (*l*).

Notice by letters of the consignment of goods to a person who has accepted bills on the faith of it cannot be treated as equivalent to the indorsement of the bills of lading (*m*); nor does the transfer of a delivery order operate in the same way as such an indorsement (*n*).

Where there would be a right to stop if the *transitus* had begun, there is, *à fortiori*, a right to refuse to deliver so as to make the *transitus* commence (*o*); and we have seen, that where there is no insolvency, a consignor who has hired the entire use of a ship may, under ordinary circumstances, take out the cargo before the vessel sails where the freight is made payable independently of the carriage of the cargo at a day not then arrived, and the charter-party does not provide that the goods shall not be removed (*p*).

Of right to refuse to allow transit to begin.

The right of stoppage is not taken away by part payment (*q*); or by the acceptance of a bill for the price of the goods; or by a part delivery of them; unless the vendee takes possession of the part, meaning thereby to take possession of the whole (*r*); in which case, the stoppage will only affect the goods which have not been delivered; that is to say, it will not revest in the

Of part payment and part delivery.

(*k*) See the judgment of Lord Denman, C. J., in *Mitchel v. Ede*, 11 A. & E. 903.

(*l*) *In re Westsanthus*, 5 B. & Ad. 817; *Spalding v. Ruding*, 6 Beav. 376.

(*m*) *Nichols v. Cleat*, 3 Price, 547. In a case at Nisi Prius, where the bill of lading had been sent to a person without a regular indorsement, and a letter had been written to him expressing an intention to indorse it, it was held that this was, as against an actual indorsee with notice of the facts, equivalent to an actual indorsement. *Dick v. Lumsden*, Peake, N. P. C. 189.

(*n*) *Ante*, p. 315.

(*o*) See *Dixon v. Yates*, 5 B. & Ad. 813, and *Gibson v. Carruthers*, 8 M. & W. 321; *McEwan v. Smith*, 2 H. of L. C. 309. A person who has shipped goods however on board of a general ship is not entitled at pleasure to demand them back without payment of freight, *Tindall v. Taylor*, 4 E. & B. 219.

(*p*) *Ante*, p. 295; *Thompson v. Small*, 1 C. B. 328.

(*q*) *Hodgson v. Loy*, 7 T. R. 440; *Edwards v. Brewer*, 2 M. & W. 375. The consignor is not bound in these cases to tender back the bill. *Ib.*

(*r*) *Stubey v. Heyward*, 2 H. Bl. 504; *Turner v. Scovell*, 14 M. & W. 28.

vendor any right over the goods actually delivered, although he will, it would seem, be entitled to hold the goods which are stopped until the price of the whole has been paid (*s*).

Of a resale.

A resale of the goods by the vendee, and payment to him, does not, if there has been nothing equivalent to a delivery of the goods to the vendee, destroy the right to stop (*t*).

Of a lien against consignee.

A lien against the consignee cannot be set up to defeat the stoppage of the goods by the consignor, for the right of lien is not available against third persons (*u*).

Who may exercise right.

Lastly, this right must be exercised by or on behalf of the vendor; a person who is neither vendor nor consignor, but only a surety for the price of the goods, cannot stop them (*x*). The consignor may stop, although the goods were consigned on the joint account of himself and the consignee, and a bill of lading has been sent to the latter making the goods deliverable to him or his assigns (*y*). Where the foreign correspondent of an English merchant procured goods abroad, on his own credit, from persons who were strangers to the English merchant, and shipped them on the account and risk of the latter at the original price, charging him only with a commission, it was held, that the foreign correspondent was so far a vendor, as between him and the merchant here, that he might stop *in transitu* (*z*). A person, however, who has a mere lien on the goods, which he loses by parting with the possession of them, cannot exercise this right (*a*).

Where the stoppage is effected by a person who has at the time no authority, a ratification of his acts by the consignor, made after the transitus is ended, is not sufficient; for the ratification must be made at a time when, and under circumstances in which, the ratifying party might himself have lawfully done the act which he ratifies (*b*).

There may of course be, under ordinary circumstances, a

(*s*) See the judgment in *Wentworth v. Outhwaite*, 10 M. & W. 436.

(*t*) *Craven v. Ryder*, 6 Taunt. 433; *Dixon v. Yates*, 5 B. & Ad. 313; see also on this point *Davis v. Reynolds*, 4 Camp. 267.

(*u*) *Oppenheim v. Russell*, 3 B. & P. 42; *Morley v. Hay*, 3 M. & R. 396;

Nicholls v. Le Feuvre, 2 B. N. C. 81;

Leuckhart v. Cooper, 3 B. N. C. 99;

Jackson v. Nichol, 5 B. N. C. 508.

(*x*) *Siffen v. Wray*, 6 East, 371.

(*y*) *Newson v. Thornton*, 6 East, 17.

(*z*) *Feise v. Wray*, 3 East, 93.

(*a*) *Sweet v. Pym*, 1 East, 4.

(*b*) *Bird v. Brown*, 4 Ex. 786.

rescission of the contract of sale by the mutual consent of the vendor and vendee, after the right of stoppage has ceased to exist (c).

The proper and ordinary mode of stopping the goods is to give notice to the carrier or person in whose custody they are, and to demand them of him. This notice ought either to be given to the person who has the immediate custody of the goods, or to the principal whose servant has the custody, at such a time and under such circumstances, that he may by reasonable diligence communicate it to his servant in time to prevent the delivery (d). How it should be exercised.

The rights of factors to deal with bills of lading and other *indicia* of property in goods, are now regulated by the statutes commonly called the Factors' Acts, 6 Geo. 4, c. 94, and 5 & 6 Vict. c. 39.

The Interpleader Act (1 & 2 Will. 4, c. 58), which gives relief to persons who are sued for money or goods in which they have no interest, and which are also claimed by some third party, will be found sometimes to relieve masters of ships from difficulty in cases of conflicting claims to goods in their possession. It has been held, however, in some cases, that this act does not apply where the person holding the goods has incurred a personal liability to either of the contending parties (e); unless, indeed, the title of the other claimant is not *paramount but derivative*; that is to say, unless it is a title derived from the claimant to whom the personal liability has been incurred (f). Interpleader act.

Where, as is usually the case, the property embarked in the voyage and adventure belongs to different owners, it sometimes becomes necessary to sacrifice the rights of some of them GENERAL AVERAGE.

(c) See *Heinekey v Earle*, 8 E. & B. 410, where the Court held that in fact an offer to rescind had not been acted on.

(d) *Whitehead v. Anderson*, 9 M. & W. 518.

(e) *Patoni v. Campbell*, 12 M. & W. 277; *Lindsey v. Barron*, 6 C. B. 291; *Horton v. Earl of Devon*, 4 Exch. 497. See, however, the cases cited in the next note.

(f) *Crawshay v. Thornton*, 2 Myl. & Cr. 1. The act was also thought, in some cases, not to apply where the title

of the claimants had not a common origin. The Common Law Procedure Act, 1860, now, by s. 12, enables "a judge to make an interpleader order, though the titles of the claimants to the money, goods, or chattels in question, or to the proceeds or value thereof, have not a common origin, but are adverse to and independent of one another." See the note upon this section in Day's Common Law Procedure Acts; *Meynell v. Angell*, 32 L. J., Q. B. 14; and *Best v. Hayes*, *ib.*, Ex. 129.

for the general good of all; and in this event the law provides that an equitable adjustment and distribution of the loss shall be made between all the parties interested (*g*).

Cases of *general* or *gross average* (*h*) arise, therefore, where loss or damage is *voluntarily and properly incurred* in respect of the goods, or of the ship, *for the general safety of the ship and cargo* (*i*).

Loss must be voluntarily incurred.

The loss or injury must be *voluntarily* incurred; that is to say, there must be a *sacrifice* of part for the sake of the rest (*h*).

Jettisons.

Thus, to put the simplest, and in early times the most usual

(*g*) There are, perhaps, no subjects upon which the laws of different countries have differed more than questions as to general average, and the mode of contribution towards it. These subjects have been largely and ably dealt with both by English and by foreign jurists. The observations in the text are, however, almost entirely confined to the decisions of our Courts upon these points; for although it is frequently interesting and useful to know what may be the rule of foreign systems in any given case, these enquiries do not fall within the scope of this work, and when any point arises in our Courts which has not been decided in them actually, or by analogy, it is very uncertain how far the principles of foreign lawyers will be adopted. See an elaborate summary of the principles governing cases of general average in the judgment in *Barnard v. Adams*, 10 How. (American Rep.) 270.

(*h*) *Simple* or *particular average* arises where any damage is done to the cargo or vessel by accident or otherwise, such as the loss of an anchor or cable, the starting of a plank, the turning sour of a cargo of wine, which are all losses which rest where they fall. See the judgment of Sir W. Scott in *The Copenhagen*, 1 Rob. 289. This expression, as applied to losses of this description, has been said to be inaccurate; but the term *average* appears strictly not to imply any more than a *damage*. See Ducange Gloss. *Averia*; Encyclopédie du Droit, tit. *Avarie*; Benecké's Princ. of Indemn. 167. See also as to the meaning of this term in policies of insurance, *post*, Chap. VII., INSURANCE, Part I., and *The Great Indian Peninsular Railway Company v. Saunders*, 1 B. & S. 41; S. C. in Cam. Scacc., 2 ib. 266.

(*i*) It is well known that this rule is of high antiquity, and that it was adopted into the Digest from the so-called Rhodian law. See Pardessus' Dissertation on the Origin of this Compilation, 1 Lois Marit. Chap. 6, p. 209; Pothier Traité des Contrats des Louages Maritimes, Seconde Partie; Park on Ins. 202; 3 Kent Comm. 232. In the English Reports questions of average do not occur early. *Hicks v. Pallington*, Moo. Rep. 297 (32 Eliz.), appears to be one of the earliest reported cases as to average. In *Mousse's Case*, 12 Rep. 63, 1 Roll. Rep. 79, where it was held that *passengers* may for the safety of their lives and *navis levandæ causâ*, throw goods overboard without being therefore responsible to the owners, no question of average, properly speaking, seems to have been raised. There is no doubt, however, that the principle of this rule was adopted from a very early period into our maritime law, either from the laws of Oleron or some other continental source; for, in 1285, Edward I. sent to the Cinque Ports letters patent declaring what goods were liable to contribute. See *post*, p. 328, note (*s*).

(*k*) See the judgment of Lord Ellenborough in *Power v. Whitmore*, 4 M. & S. 149; see also *Sheppard v. Wright*, 1 Show. P. C. 18; *Birkley v. Presgrave*, 1 East, 220, and the judgment of Lord Stowell in *The Copenhagen*, 1 Rob. A. R. 293. According to the Rhodian law contribution was not only to be made in cases of jettison, but (and herein the Roman law was different) every loss by fire, pillage, shipwreck, or other *vis major* which could not be traced to any one, was to be made good by a general contribution on all that was saved. See 1 Pardessus Lois Marit. 226.

form of this question, if goods are thrown overboard in a storm for the purpose of saving the ship and residue of the cargo from imminent danger, the several persons interested in the ship, freight, and cargo, must contribute rateably to indemnify the person whose goods have been sacrificed against all but his proportion of the general loss (*l*).

This is the general principle. Some cases which are mentioned below appear, however, hardly to fall within it.

There is in general no contribution where the damage is only the natural result of a sea peril, although the exposure to that peril may have been caused by extraordinary exertions to avoid capture or wreck. Thus, where a ship, which had been captured by a privateer, effected her escape by carrying an unusual press of sail, and in so doing was much strained and injured, and lost the head of her mainmast, it was held that this was not a case for average, but only a sea risk, since if the weather had been better, or the ship stronger, nothing might have happened (*m*).

No contribution in respect of ordinary sea perils.

Where a ship, in order to avoid being driven on shore, and for the necessary preservation of the ship and cargo, stood out to sea under a press of sail in tempestuous weather, and, in consequence, suffered injury in her hull, sails and tackle, it was held that there was not a general average loss. The same rule was also acted upon in respect of the wages and provisions of the crew whilst the ship remained in a port which she had, earlier in the voyage, been compelled to enter for safety, in order to repair damages occasioned by tempest. The expenses of the repairs, and the wages and provisions of the crew during her subsequent detention in this port on account of bad weather, were also held not to be a general average (*n*). But it is otherwise where there is a voluntary sacrifice of some portion of the ship or cargo for the general good, although the immediate cause of the damage may be a peril of the sea. Thus, where a

(*l*) See the judgment in *Butler v. Wildman*, 3 B. & Ald. 398; Park on Ins. 160. In cases of jettison, the freight which the shipowner would have received for the goods thrown overboard must be made good to him by a general contribution. Benecké, Princ. of Indemn. 176.

(*m*) *Covington v. Roberts*, 2 B. & P., M.P.

N. R. 378.

(*n*) *Power v. Whitmore*, 4 M. & S. 149. According to the judgment of Buller, J., in *Da Costa v. Newnham*, 2 T. R. 413, these expenses were a general average; but the expressions used in that case appear to be too wide. See *post*, p. 325, note (*d*).

ship was caught in a violent squall as she was entering harbour, and the master, in order to preserve the vessel and cargo, cut the cable from the best bower anchor, and saved the ship by mooring her with it to the pier, and he afterwards employed men to give extraordinary assistance, and to go on board to keep the ship clear of water, in order that the cargo might not be spoiled, it was held that the value of the cable, and also, apparently, the other expenses, were an average loss. The rule laid down by Lord Kenyon, C. J., in this case was, that all ordinary losses and damage sustained by the ship, happening immediately from the storm or perils of the sea, must be borne by the shipowners; but that all those articles which are made use of by the master and crew upon a particular emergency, and out of the usual course, for the benefit of the whole concern, and the other expenses incurred, must be paid for proportionably as a general average (*o*). Where a ship was in the course of her voyage run foul of by another ship, owing to the violence of the wind and weather, and was damaged, and the master was in consequence obliged to *cut away part of the rigging*, and to return to port to repair the injuries sustained by the accident and by the cutting away, and it appeared that the ship could not have prosecuted her voyage, or have kept the sea in safety without returning and repairing, the Court held that the expenses of repairs, so far as they were absolutely necessary to enable the ship with her cargo to prosecute the voyage (excluding from this calculation any benefit to the ship beyond the mere removal of her incapacity to proceed), might properly be considered as a general average; and that the expenses of unloading might also be included, if this was necessary in order to effect the repairs. It was considered, however, that the expenses of the master, during the unloading, repairing, and reloading, and the cost of crimpage to replace deserters, during the repairs, must be borne by the shipowner (*p*). Where a ship was stranded by perils of the sea, and in order to get her off the cargo was discharged, and forwarded in another vessel, and subsequently expenses were incurred in getting the ship off and taking her into a port for repairs, it was held that the expenses incurred from the misad-

(*o*) *Birkley v. Presgrave*, 1 East, 220; see also *Marshall v. Dutrey*, Select Cases of Evidence, 58; 2 Phillips on Insur. 88.

(*p*) *Plummer v. Wildman*, 3 M. & S.

482; and see as to the expenses of repairs and unloading in these cases, *post*, p. 325, and *Hall v. Janson*, 4 E. & B. 500.

venture until the cargo was discharged constituted a general average, but that the subsequent expenses were not chargeable to general average, but to the ship alone (*q*). In this case it did not however appear that it was in any way for the advantage of the owner of the cargo that the ship should be got off and repaired, and the view taken of the facts by the Court was, that the goods had been in the first instance saved by a distinct and completed operation, and that afterwards a new operation began for the benefit of the shipowner. But in a later case, where the ship being stranded the goods were rescued and placed in a lighter, and remained under the control of the master until the ship was afterwards repaired and enabled to take in the goods again and prosecute her voyage, it was held that this was to be deemed one continuous transaction, and that the goods were liable to contribute to the expenses of the repairs to the ship, although they happened to be saved in the earliest part of the operation (*r*).

Upon the same principles it is said, in an early case (*s*), that there must be contribution if parcel of the goods is *given* as a composition to a pirate to save the residue, but that it is otherwise if a pirate *takes* part by violence.

If to avoid danger, or to repair damage occasioned by a storm, the ship is compelled to take refuge in a port to which she is not destined, and in order to enter is obliged to lighten the ship by removing part of the cargo into barges, and this portion is lost on its passage to the shore, this loss is a general average, for it is occasioned by the voluntary removal of the goods for the common benefit (*t*).

There appears to be no doubt that damage voluntarily and necessarily done to the ship in order to facilitate the jettison, is a general average loss. Damage done to ship to facilitate jettison.

Any loss necessarily and directly resulting from a voluntary stranding of the vessel upon a rock or strand in order to avoid Voluntary stranding.

(*q*) *Job v. Langton*, 6 E. & B. 779.

(*r*) *Moran v. Jones*, 7 E. & B. 523.

(*s*) *Hicks v. Palington*, Moo. 297. But by the 22 Geo. 3, c. 28, 43 Geo. 3, c. 160, and 45 Geo. 3, c. 72, ss. 16 & 17 (the last two of which acts expired with

the last general war), and by the 17 Vict. c. 18 (which expired with the late Russian war), contracts for the ransom of captured ships or goods were made wholly void.

(*t*) *Park on Ins.* 205.

wreck or capture, must also, if the ship is recovered so as to perform the voyage, be made good by a general contribution (*u*).

Loss must be properly incurred.

The loss must be *properly* incurred; that is to say, it must be incurred for sufficient cause and under circumstances which show that the course pursued was prudent and reasonable, and not a mere act of groundless timidity (*x*). It should be effected with as much choice and deliberation as is possible; but by the law of England the master is not bound to consult with his officers or crew previously to the sacrifice; although this course, where practicable, is often prudent. In all cases, however, a formal protest or statement of the jettison or damage ought to be made on the earliest occasion, in order to rebut any suspicion of fraud (*y*).

Sale of part of cargo for repairs, &c.

Where part of the cargo is necessarily sold by the master in order to raise money for defraying expenses or repairing injuries which are themselves matter of general average, the loss must be made good by general contribution (*z*). It is otherwise where the loss or damage which renders the sale necessary is only a particular average. Thus, where the master was arrested at Copenhagen by the agent of the ship for a debt due to him personally, for money advanced to pay the Sound dues and the expenses of repairing sea damage suffered by the ship, and the master, in order to obtain his liberation and proceed on the voyage, sold part of the cargo, this was considered to be a loss which ought to fall on the shipowner only (*a*). And it is clear that no claim for general average can arise where the goods are sold merely to defray the expenses of repairs made necessary by

(*u*) Benecké, *Princ. of Indemn.* 215; Arnould on *Insur.* 915 (2nd edit.). It will be observed, from the cases cited above, that the claim to contribution may extend to collateral damage necessarily connected with the main injury which forms the subject of general average. A question which has been much discussed by foreign jurists, and with different results, is, whether, if the ship is wholly lost by the act of running her on shore, and the cargo is saved, the goods are bound to contribute. There has been no decision in our Courts on

the point. In America it has been held that the goods must contribute. See *The Columbian Insurance Company v. Ashby*, 13 Peters' (American) Rep. 331; 3 Kent Comm. 239; Arnould on *Insur.* 918 (2nd edit.).

(*x*) See 3 Kent Comm. 233; Emérigon *Traité des Assur.*, Chap. xii. s. 39, vol. 1, p. 588.

(*y*) *Birkley v. Presgrave*, 1 East, 220.

(*z*) See *The Gratiudine*, 3 Rob. 255, and *The Constancia*, 4 Notes of Cases, 677; Arnould on *Ins.* 907 (2nd edit.).

(*a*) *Dobson v. Wilson*, 3 Camp. 480.

ordinary sea perils against which the shipowner is bound by the contract of affreightment to provide (*b*).

The question whether any particular expenses of repairs done to a ship in a port of distress form a subject of general average, appears to depend upon the same principles. Where the injury itself is a general average loss, and in this case only, under ordinary circumstances, the repairs stand upon the same footing (*c*).

Where a ship puts into a port in distress owing to an injury which is in itself the subject of general average, the expenses of repairs and of unloading, and the port charges, seamen's wages, and cost of provisions during the detention, form matter of general average (*d*). And where a ship is driven by sea-perils into a port to refit, the expenses necessarily incurred in unloading and reloading the cargo, for the purpose of repairing the ship that she may be made capable of proceeding on the voyage, give a claim to general average contribution, for the acts which occasioned these expenses become necessary by reason of perils insured against, and they are deliberately done for the joint benefit of those who are interested in the ship, the cargo and the freight (*e*).

In cases of detention by embargo, the wages and provisions of the crew are not a general average (*f*); nor are the expenses occasioned by ordinary quarantine, or by waiting for convoy.

(*b*) *Powell v. Gudgeon*, 5 M. & S. 431; *Hallett v. Wigram*, 9 C. B. 580; *Duncan v. Benson*, 1 Exch. 537; 3 Exch. 644; *Chapman v. Benson*, 6 M. & G. 792; *S. C.* in error, 2 H. of L. Cases, 696; 8 C. B. 950.

(*c*) Arnould on Ins. 922 (2nd edit.).

(*d*) The rule, as laid down in the judgment in *Da Costa v. Newnham*, 2 T. R. 413, would seem to be wide enough to include these cases; see also *Hall v. Janson*, 4 E. & B. 500. *Power v. Whitmore*, 4 M. & S. 141, and *Plummer v. Wildman*, 3 M. & S. 482, are cited by Mr. Chancellor Kent (3 Comm. 236) as establishing that, according to the English law, where a ship is obliged by any sea peril to put into port for the general safety in order to refit, the wages and provisions of the crew are not, but that the expenses of unloading and warehousing, &c., are, a general average. There appears, however, to be no principle for this distinction; and it is to be

observed that in *Plummer v. Wildman* the return to port was rendered necessary, not only by the damage sustained by the collision, but by the necessary and voluntary cutting away of part of the rigging. The American Courts hold that where a ship is obliged to return to refit, the necessary expenses of unloading and reloading, and the wages and provisions of the crew, are a general average. See 3 Kent Comm. 236, note (*c*); also *Job v. Langton*, 6 E. & B. 779, and *Moran v. Jones*, 7 E. & B. 523, cited *ante*, p. 321.

(*e*) See the judgment in *Hall v. Janson*, *ubi supra*; *The Copenhagen, Mening*, 1 Rob. 289, and *Stevens on Average*, 24 (2nd edit.).

(*f*) See the judgment of Buller, J., in *Da Costa v. Newnham*, *ubi supra*; Arnould on Ins. 929 (2nd edit.). In America the same rule is acted on. 3 Kent Comm. 236.

The expense of salvage appears, however, to be one that ought to be made good by general contribution (*g*).

Deck cargoes. According to most of the foreign systems of law, goods laden on deck are excluded from the benefit of general average when they are lost by jettison; but by the law of this country (so far as it can be considered settled by actual decisions) there is no inflexible rule that in all cases, and under all circumstances, there shall be no contribution for the jettison of deck loads; on the contrary, if there is no statutory prohibition of this practice relating to the particular voyage (*h*), and there exist a custom in the trade to load the goods in this way, a claim for general average, in respect of their loss, may be sustained (*i*). Where the master has loaded the goods on deck with the consent of the merchant, a claim for contribution exists as against the shipowner; since there is no remedy in this case against the shipowner for a wrongful loading of the goods on deck, and if there were, as between these parties, no right to contribution, the owner of the goods would bear the whole of a loss which was incurred for the general benefit (*k*).

Damage done in action.

By the law of this country, the expenditure of ammunition in resisting capture, the damage done to the ship in the action, and the expenses of curing the wounded sailors, are losses which do not form the subject of general average. No particular part of the property is voluntarily sacrificed, in such a case, for the protection of the rest. The resistance is, it is true, for the general benefit, but it is part of the adventure, and the losses must rest where the fortune of war casts them (*l*).

(*g*) See Arnould on Ins. 931 (2nd edit.).

(*h*) By the 5 & 6 Vict. c. 17, ships carrying any timber from British North America or Honduras were prohibited from stowing any part of it on deck. This act was made perpetual by the 8 & 9 Vict. c. 45, which was itself repealed by a later act of the same session, namely, the 8 & 9 Vict. c. 84. The 8 & 9 Vict. c. 93, s. 25, contains, however, a similar prohibition.

(*i*) See *Da Costa v. Edmunds*, 4 Camp. 142; 2 Chit. Rep. 227; *Gould v. Oliver*, 4 B. N. C. 134; *Milward v. Hibbert*, 3 Q. B. 120; *Harley v. Milward*, 1 Jones & Carey (Irish), 224. See also a

learned note on this subject in the 10th edit. of Abbott on Ship. 366, and 3 Kent Comm. 240.

(*k*) *Gould v. Oliver*, *ubi supra*. Where a statute prohibits the carrying of a deck cargo on a particular voyage, the whole voyage is rendered illegal if cargo is carried on deck, and the insurance is vitiated not merely as to so much of the cargo as is loaded on deck, but as to the whole cargo. *Cunard v. Hyde*, 2 E. & E. 1.

(*l*) See the judgment in *Taylor v. Curtis*, 6 Taunt. 608. The soundness of this rule, so far as it relates to merchant vessels, has been doubted. See Arnould on Insur. 913 (2nd edit.).

The loss must be incurred for the *general safety of the ship and cargo*. Where the whole adventure was never in jeopardy, since the goods lost consisted of corn which the captain was forced by a mob to sell at a low rate, although no injury was intended or done to any other part of the cargo, it was held that this was not a case for general average (*m*).

Loss must be for general safety.

The sacrifice must also be successful to the extent of purchasing safety for some portion of the property embarked in the adventure; at least, unless this is the result, there is no right to contribution, nor, indeed, any fund out of which it can come (*n*).

We have seen that the ship and freight contribute towards general average. The value of the ship must be taken at the end of the voyage, and the freight which is chargeable consists of the clear earnings, after deducting the expenses of the voyage and wages of the crew (*o*). The mariners do not contribute for their wages (*p*).

What articles contribute.

With respect to the goods which must contribute, the general rule has been stated to be, that all merchandize put on board for the purpose of traffic must contribute (*q*).

The ammunition and stores of the ship do not contribute; neither do the provisions on board, even although the cargo consist entirely of passengers (*r*). Nor does the wearing apparel, luggage, jewels, or other property of this description, belonging to the passengers and crew, which is taken on board

(*m*) *Nesbitt v. Lushington*, 4 T. R. 783; *Butler v. Wildman*, 3 B. & Ald. 398; and see *Job v. Langton*, 6 F. & B. 779, and the cases cited, *ante*, p. 323.

(*n*) The equity of this limitation is strongly controverted by Mr. Benecké, who says, "no one has a right to attempt the preservation of the whole at the risk of an individual." See Benecké, *Princ. of Indemn.* 179. Doubtless this rule may lead occasionally to hardship, but it seems to flow from the very principle upon which the claim for general average depends. See 3 Kent Comm. 235, and the American cases cited there. The precedents of pleadings usually allege that the loss was incurred "in and about the preservation of the ship and cargo," or that they were preserved. See 2 Chit. Plead. 50, 7th edit.; *Gould v. Oliver*, 4 B. N. C. 134.

(*o*) *Stevens on Average*, 59 (5th edit.). Where a charter-party provided

that the freight was to be paid for every ton of goods that should be brought home, and an average loss was incurred in repairs on the outward voyage, it was held that the whole freight was liable to contribute, as the whole was eventually preserved to the owners by the repairs. *Williams v. London Assurance Company*, 1 M. & S. 318. In the case of goods jettisoned, the shipowner must be allowed the freight which he would have earned on them. Benecké, *Princ. of Indemn.* 178.

(*p*) 3 Kent Comm. 241. In the single case of ransom (which is prohibited by our law), the mariners' wages are chargeable.

(*q*) 1 Magens on Insur. 62; *Brown v. Stapylton*, 4 Bing. 119. Deck goods must, it seems, contribute, although they are generally not contributed for. *Arnould on Ins.* 936 (2nd edit.).

(*r*) *Brown v. Stapylton*, *ubi supra*.

for use and not for traffic (*s*). But although these do not contribute, it is apprehended that if ammunition, provisions, passengers' luggage, or other goods which are exempt, are sacrificed for the general good, they must be paid for as other goods by general contribution.

Neither passengers, crew, nor convicts carried as passengers, can be called on to contribute for their personal safety; since, in accordance with the ancient rule of English law, there can be no estimation of the life of a man (*t*).

Adjustment of
average.

In adjusting the average, or calculating the values at which the articles which are to contribute are to be taken, different systems have been adopted at different times and places.

The rule now adopted in England, is to value the goods sacrificed as well as the goods saved at their selling price, if the ship arrives at her port of destination, and the valuation is made there; but if she puts back to her lading port, and the average is adjusted there, the invoice or cost price is taken, no other being well ascertainable. It is obvious that the value of the property sacrificed ought to be included, for the owners of it are not to be indemnified completely, but only against all but their rateable share of the general loss (*u*).

In estimating the value of masts, cables, and sails, it is usual to deduct one-third from new work for old (*x*). The value of the ship, if lost, should apparently be taken by deducting from her value at the port of departure a reasonable allowance for the wear and tear up to the time of the disaster (*y*).

Where there is no special contract to disturb the general rule, losses by general average are to be calculated, as between the owner of the ship and the owner of the goods, according to the law at the port of discharge (*z*); but this rule will be often modified if the question arise on a contract made in England,

(*s*) 1 Magens on Ina. 63; 3 Kent Comm. 240. The rule of the Rhodian law and of the Basilican Constitutions was otherwise. See 1 Pardessus Lois Marit. 175, 227. And it may perhaps be inferred from the remarkable letters-patent sent by King Edw. I. in 1285 to the Cinque Ports, which are cited by Pardessus (Lois Marit. vol. 4, p. 204), and which will be found in 2 Rymer's Fœdera, p. 298 (English edit.), that in England the strict rule of these ancient

maritime systems was, at one time, acted upon.

(*t*) 1 Pardessus Lois Marit. 175; Abbott on Ship. 384 (10th edit.).

(*u*) *Ib.* 504; Smith Merc. Law, 295.

(*z*) See *post*, Chap. VII., INSURANCE, Part II.

(*y*) 3 Kent Comm. 242. This is the ordinary rule in America. See further as to the details of adjustment, Arnould on Ins. 937 to 969 (2nd edit.), and Bencké, Princ. of Indemn.

(*x*) *Simonds v. White*, 2 B. & C. 805.

for in this case the words will, at least *prima facie*, be held to have been used in the sense which is ordinarily given to them in England (a).

Contribution towards a general average may be enforced by an action (b), or by a suit in equity (c); but it would seem that the Court of Admiralty has usually no jurisdiction to entertain this question (d); unless, perhaps, where the whole of the proceeds of the ship, cargo, and freight is actually in the registry of the Court (e).

Mode of enforcing contribution.

To an action by a shipowner against a shipper of goods to recover his proportion of an average loss, a plea stating that there never was any express promise to the effect mentioned in the declaration, that the ship was unseaworthy at the time of the commencement of the voyage, and that the average loss arose in consequence of such unseaworthiness, is good,—for it shows that the damage in respect of which the plaintiff claims contribution, resulted from his own negligence and misconduct (f).

(a) *Power v. Whitmore*, 4 M. & S. 141.

(b) *Birkley v. Presgrave*, 1 East, 220; *Dobson v. Wilson*, 3 Camp. 480; *Gould v. Otter*, 4 B. N. C. 134.

(c) *Sheppard v. Wright*, Show. P. C. 18.

(d) *The Constanca*, 4 Notes of Cases, 677.

(e) *Ib.*; *The Packet*, 3 Mason (American) Rep. 255; *The Eleonora Catharina*, 4 Rob. 156.

(f) *Schloss v. Heriot*, 14 C. B., N. S. 59.

CHAPTER VII.

INSURANCE.

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GENERAL
NATURE OF
CONTRACT.

MARINE insurance is a contract of indemnity against certain perils or sea risks to which the ship, freight, or cargo, and the interests connected therewith, may be exposed during a particular voyage, or a fixed period of time; whereby, in the language of an old statute (a), "upon the loss or perishing of

(a) 43 Eliz. c. 12. This act, after reciting the benefits of maritime insurance, enabled the Lord Chancellor to direct a commission to the Judge of the Admiralty, the Recorder of London, two doctors of civil law, two common lawyers, and eight grave and discreet merchants, to make decrees in cases

arising out of insurances. This Court, however, soon fell into disuse. An interesting account of the history of insurance, and of the writers upon it, will be found in Kent's Commentaries, vol. 3, p. 342. See also the Introduction to Park on Insurance, and the Introductory Lecture in Duer on Insurance.

any ship there followeth not the undoing of any man, but the loss lighteth rather easily upon many, than heavily upon few."

To treat the subject of insurance fully, it would be necessary to consider the maritime codes of foreign countries; but as this would require a space beyond the scope of the present work, the remarks upon it will be chiefly confined to the mode in which the contract has been dealt with by the Legislature and Courts of this country. In so doing it is proposed to arrange that portion of the subject which falls within the first division of this Chapter under the following heads:—1, *the parties to the contract*; 2, *the form and construction of policies, and their alteration*; 3, *open, and valued policies, time, voyage, and mixed policies*; 4, *re-insurance and double insurance*; 5, *the subject-matter of insurance*; 6, *the voyage, and the effects of delay and deviation*; 7, *the perils insured against*; and, 8, *the memorandum*; leaving the subjects of *warranty, representation, and concealment*, and of *losses, adjustment, remedies on the policy, and return of the premium*, for consideration in the second part of this Chapter.

First, as to *the parties to the contract*.

The persons whose property is insured are called the *insured* or *assured*. The parties who undertake to insure are called the *insurers* or *underwriters*. Parties to contract.

Any number of persons may now be marine insurers. Formerly, ordinary partnerships or companies could not insure; for the exclusive right of insuring upon joint stock belonged, under the 6 Geo. 1, c. 18(b), to two companies, namely, the Royal Exchange and the London Assurance Corporations. This privilege was, however, taken away by the 5 Geo. 4, c. 114, and insurance companies stand now, in all important respects, upon the same footing as private underwriters(c). Who may be insurers.

(b) The preamble of this act recites the supposed advantages of this restriction. For instances of infringement of the privileges of these companies, see *Sullivan v. Greaves*, 1 Park, 8; *Mitchell v. Cockburne*, 2 H. Bl. 379; *Booth v. Hodson*, 6 T. R. 406; *Aubert v. Maze*, 2 B. & P. 371. It was in order to avoid the effect of these charters that clubs of mutual insurers, which still exist in

many parts of England, were established. See as to these, *Harrison v. Millar*, 7 T. R. 340, n.; *Strong v. Harvey*, 3 Bing. 304.

(c) By s. 2 of this act, the existing rights of the two chartered companies, other than the exclusive right to insure, were expressly preserved. One of these is the right of pleading the general issue. See the 11 Geo. 1, c. 30, s. 43.

Who may be insured.

All persons, except alien enemies, may be insured. It was once doubted whether the latter also could not legally be insured (*d*); but it was decided in 1794, and it has ever since been held, that insurance upon the property of an enemy is repugnant to public policy, and consequently void (*e*); nor can an English insurance, even although effected before the commencement of hostilities, cover a loss by British capture (*f*). Where, however, a neutral subject had an interest in goods in common with one who was an alien enemy, and the former insured his part interest, it was held that he was entitled to recover (*g*). If, when the insurance is entered into, the insured is an alien, and after the loss he becomes an enemy, his right of action is only suspended in consequence of his personal *status* being changed, and it revives upon the return of peace (*h*). Where an enemy is allowed by royal licence to trade, insurances upon adventures within its protection are legalized (*i*): and if the assured is domiciled in this country, the disability to sue in our Courts in his own name is also removed (*j*).

Interest of assured.

A policy of marine insurance is, in terms, a contract of indemnity against any damage which may arise from the perils insured against (*k*); but it was not essential at common law that the insured should have any interest in the subject-matter of the insurance. Whether the insured had or had not any interest

This right of pleading generally is not taken away by the 5 & 6 Vict. c. 97, s. 3. *Carr v. The Royal Exchange Assurance Company*, 31 L. J., Q. B. 93.

(*d*) See the judgment of Lord Hardwicke in *Henkle v. The Royal Exchange Assurance Company*, 1 Ves. 317; see also *Gist v. Mason*, 1 T. R. 85; and *post*, p. 353.

(*e*) *Brandon v. Nesbitt*, 6 T. R. 23.

(*f*) *Furtado v. Rodgers*, 3 B. & P. 191, which was decided upon the broad ground that all commercial intercourse with an enemy is illegal. *Potts v. Bell*, 8 T. R. 548, overruling *Bell v. Gibson*, 1 B. & P. 345; see also *Kellner v. Le Mesurier*, 4 East, 396, *Gamba v. Le Mesurier*, *ib.* 407, *Flinndt v. Waters*, 15 East, 260, *The Packet de Bilbao*, 2 Rob. 133, *Reid v. Hoskins*, 4 E. & B. 979, 5 E. & B. 729, *Esposito v. Bowden*, 4 E. & B. 963, *Avery v. Bowden*, 5 E. & B. 714, the temporary statutes, the 21 Geo. 2, c. 4, and the 33 Geo. 3, c. 27, and Phillips on Ins. c. 3, s. 2. Valin, speaking of our conduct during the war

of 1756, when this country allowed insurances on the ships of the enemy, observes truly, "Mais il arrivait delà qu'une partie de la nation nous rendoit par l'effet de l'assurance ce que l'autre nous prenoit par le droit de la guerre." Comm. sur l'Ordon. de la Marine, liv. 3, tit. 6, art. 3.

(*g*) *Rotch v. Edie*, 6 T. R. 413.

(*h*) *Flinndt v. Waters*, *ubi supra*. Such a defence, therefore, cannot be pleaded in bar. *Ib.*; see also *Herman v. Kingston*, 3 Camp. 152.

(*i*) *Kensington v. Inglis*, 8 East, 273.

(*j*) *Usparicha v. Noble*, 13 East, 332.

(*k*) See *Kent v. Bird*, 2 Cowp. 583; also the notes to *Godsall v. Boldero*, 2 Smith, L. C. (5th edit.), 239, and *Irving v. Manning*, 6 C. B. 391; see also *Dalby v. The India and London Life Assurance Company*, 15 C. B. 365, where it was held (overruling *Godsall v. Boldero*), that the contract contained in a life policy is not a contract of indemnity; and *post*, p. 343.

the insurance was valid; but unless the words "interest or no interest" were inserted in the policy the law presumed that the insurance was on interest, and proof of it was necessary (*l*). To prevent the perversion of the contract, however, into a mere wager, it was provided by the 19 Geo. 2, c. 37, s. 1, that no assurance should be made by any person, bodies corporate or politic, on any ship belonging to his Majesty, or any of his subjects, or on any goods, merchandizes, or effects laden, or to be laden, on board such ships, interest or no interest, or without further proof of interest than the policy, or by way of gaming or wagering, or without benefit of salvage to the assurer, and that every such assurance should be void.

This statute applies to an insurance on profits on goods laden on board a ship (*m*). Foreign ships are omitted from its provisions, owing, it has been said, to the difficulty of bringing witnesses from abroad to prove interest. Consequently insurances on foreign ships are valid, even although there is no interest, provided the policy is expressed on the face of it to be a wager policy (*n*).

It is not necessary that the interest of the assured should exist at the time when the policy is effected; it is sufficient if he was interested during the risk and at the time of the loss (*o*). And in the case of a policy upon goods "lost or not lost," the assured may recover, although the goods received damage before he acquired any interest in them; provided he bought them during the voyage, and without knowing that they were injured; for this is a contract of indemnity against all *past* as well as all future losses (*p*). Nor is his insurable interest determined by his parting, *after* the loss, with the property insured; since he may sue as trustee for the person to whom it has passed (*q*). Where, however, the assured parted *before* the loss with the ship insured, and it did not appear that there was any agreement that the policy should be kept alive for the benefit of the assignee, it was held that the assured could not recover (*r*).

By the Passengers Act, 1855, no policy of assurance effected in respect of any passages, or of any passage or compensation

(*l*) See the judgment of Chambre, J., in *Lucena v. Craufurd*, 3 B. & P. 101; S. C., 2 N. R. 269.

(*m*) *Smith v. Reynolds*, 1 H. & N. 221.

(*n*) See *Theilussou v. Fletcher*, 1 Dougl. 315; *Craufurd v. Hunter*, 8 T. R. 13; *Lucena v. Craufurd*, *ubi supra*; *Nantes*

v. Thompson, 2 East, 385, overruled by *Cousin v. Nantes*, 3 Taunt. 512.

(*o*) *Rhind v. Wilkinson*, 2 Taunt. 237.

(*p*) *Sutherland v. Pratt*, 11 M. & W. 296.

(*q*) *Sparkes v. Marshall*, 2 B. N. C. 761.

(*r*) *Powles v. Innes*, 11 M. & W. 10.

money, by any person by that act made liable in certain events to provide passages or to pay such money, or in respect of any other risk under that act, is invalid by reason of the nature of the risk or interest (*s*). So, insurances effected by shipowners in respect of their liability for loss of life or personal injury, or damage or loss to goods, occurring without their actual fault or privity, are not invalid by nature of the risk (*t*).

Mode of
effecting insur-
ances.

Policies are usually effected by brokers who are employed by the assured (*u*). Indeed it would be nearly impossible for the merchant or shipowner to act for himself in effecting insurances, owing to the complexity of the modern system of insurance, and the peculiar knowledge which is requisite in this matter. The broker is the agent of the assured to effect the policy; yet he is not solely his agent, for he is a principal to receive the premium from the assured, and pay it to the underwriter (*v*), and is liable to the latter for it (*w*).

The mode in which losses are settled by policy brokers will be mentioned at the close of this Chapter.

FORM AND
CONSTRUCTION
OF POLICIES
AND THEIR
ALTERATION.

Secondly, as to *the form and construction of policies and their alteration*.

The form of marine policy used in this country has varied little for more than two hundred years.

Ordinary form
of policy.

The following is the ordinary form now in use at Lloyd's:—

In the name of God. Amen. as well in
own name, as for and in the name and names of all and
every other person or persons to whom the same doth,
may, or shall appertain, in part or in all, doth make assur-
ance, and cause and them, and every of them, to be

(*s*) 18 & 19 Vict. c. 119, s. 55.

(*t*) M. S. A. Amendment Act, 1862, s. 55.

(*u*) A person cannot sue on a policy which was not made with him personally, nor with an agent authorized at the time on his behalf. *Watson v. Swann*, 11 C. B., N. S. 756.

(*v*) See the judgment of Lord Ellenborough in *Jenkins v. Power*, 6 M. & S. 287. The policy always contains an admission by the underwriter of the receipt of the premium, although the practice is, that it is not in fact paid, but allowed in account between the underwriter and him. The effect of this

is, that there is no remedy for it against the assured, if it is not properly allowed by the broker. *Ib.*; *Dalzell v. Mair*, 1 Camp. 532. As to what constitutes a delivery of a policy, see *Xenos v. Wickham*, 13 C. B., N. S. 381; *S. C.*, in Cam. Scacc., 14 C. B., N. S. 435. The fact that instructions have been given for an insurance and that a slip has been obtained, is not a sufficient compliance with an agreement to keep a ship insured. See *Parry v. The Great Ship Company*, 33 L. J., Q. B. 41.

(*w*) See *per* Bayley, J., in *Power v. Butcher*, 10 B. & C. 340.

insured, lost or not lost, at and from upon any kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat, and other furniture, of and in the good ship or vessel, called the whereof is master, under God, for this present voyage or whosoever else shall go for master in the said ship, or by whatsoever other name or names the said ship, or the master thereof, is or shall be named or called; beginning the adventure upon the said goods and merchandizes, from the loading thereof aboard the said ship, at upon the said ship, &c. and so shall continue and endure, during her abode there, upon the said ship, &c. And further, until the said ship, with all her ordnance, tackle, apparel, &c. and goods and merchandizes whatsoever, shall be arrived at upon the said ship, &c. until she hath moored at anchor twenty-four hours in good safety; and upon the goods and merchandizes, until the same be there discharged, and safely landed. And it shall be lawful for the said ship, &c. in this voyage, to proceed and sail to, and touch and stay at, any port or places whatsoever, without prejudice to this insurance. The said ship, &c., goods and merchandizes, &c., for so much as concerns the assureds, by agreement between the assureds and assurers in this policy, are and shall be valued at .

Touching the adventures and perils which we the assurers are contented to bear, and do take upon us in this voyage; they are of the seas, men of war, fire, enemies, pirates, rovers, thieves, jettisons, letters of mart and counter mart, surprisals, takings at sea, arrests, restraints, and detainerments of all kings, princes and people, of what nation, condition, or quality soever; barratry of the master and mariners, and of all other perils, losses, and misfortunes that have or shall come to the hurt, detriment or damage of the said goods and merchandizes, and ship, &c., or any part thereof. And in case of any loss or misfortune, it shall be lawful to the assureds, their factors, servants, and assigns, to sue, labour, and travel for (x), in and about the defence, safeguard and recovery of the said goods and merchandizes, and ship, &c., or any part thereof, without

(x) As to the meaning of these words see *The Great Indian Peninsula Railway Company v. Saunders*, 1 B. & S. 41;

S. C., in *Cam. Scacc.*, 2 B. & S. 266, and *Booth v. Gair*, 15 C. B., N. S. 291.

prejudice to this insurance ; to the charges whereof we the assurers will contribute, each one according to the rate and quantity of his sum herein assured. And it is agreed by us the insurers, that this writing or policy of assurance shall be of as much force and effect as the surest writing or policy of assurance heretofore made in Lombard Street, or in the Royal Exchange, or elsewhere in London. And so we the assurers are contented, and do hereby promise and bind ourselves, each one for his own part, our heirs, executors, and goods, to the assureds, their executors, administrators, and assigns, for the true performance of the premises, confessing ourselves paid the consideration due unto us for this assurance by the assured, at and after the rate of . In witness whereof, we the assurers have subscribed our names and sums assured in London.

N.B.—Corn, fish, salt, fruit, flour, and seed are warranted free from average, unless general, or the ship be stranded. Sugar, tobacco, hemp, flax, hides and skins are warranted free from average, under five pounds per cent. ; and all other goods, also the ship and freight are warranted free from average, under three pounds per cent., unless general, or the ship be stranded.

It will be seen that the essential parts of the contract are as follows :

The stamp ; the name of the assured ; the ship and master ; the subject-matter of insurance ; the voyage ; the perils insured against ; the premium ; the memorandum ; and the subscription.

It will be convenient to notice, in the first place, the question of stamps, and then to deal with those of the above divisions which relate more particularly to the form of the policy, leaving the others, which are of a more general character, to be considered in a later part of this Chapter.

Stamps.

The statutes at present in force which relate to the stamping of marine policies are the 35 Geo. 3, c. 63, and the 7 & 8 Vict. c. 21. The latter of these acts regulates the amount of duty payable (y).

The policy must be stamped before it is executed (z), and therefore cannot be stamped upon payment of a penalty when it is given in evidence (a). All persons, whether brokers, under-

(y) See the schedule to this act, *post*, Appendix, p. xix.

(z) 35 Geo. 3, c. 63, s. 14.

(a) See the Com. Law Proc. Act,

writers, or others, effecting an insurance without a stamp, are liable to a penalty of 100*l.* (b); and in such cases a broker cannot recover his fees. Where an over-assurance is made upon a homeward voyage, the Commissioners of Stamps may, in some cases, return so much of the duty as has been paid on the excess (c). Both of the above acts contain exceptions enabling the officers of the two chartered companies to make agreements to insure upon labels or slips of unstamped paper, provided they are truly dated, and a stamped policy is executed within three office days (d). This provision does not, however, give any validity to these documents, nor can they be adverted to in order to explain the meaning of the parties (e).

The effect under the Stamp Acts of the alteration of a policy is mentioned below (f).

The Legislature has provided that it shall not be lawful to effect a policy on any ship, goods, or other property, unless the name or the usual style and firm of dealing of one or more of the persons interested, or of the consignor or consignee of the property insured, or of the person residing in Great Britain who receives the order for effecting the policy, or of the person who gives the order to the agent immediately employed to effect it, is inserted in it (g). This enactment has met with a liberal construction; and it has been held that a policy effected in the name of the general agents of the consignor, who receive a cargo upon the refusal of the consignee to accept it, is valid; and that if, acting upon the clear intention of the consignor, although without his express authority, they effect an insurance as his agents, or if their act is subsequently ratified by their principal, they may recover on the policy (h). Nor is it neces-

The name of the assured.

1854, 17 & 18 Vict. c. 125, ss. 28, 29, and the proviso at the conclusion of the latter section.

(b) 35 Geo. 3, c. 63, ss. 15, 16 and 17. By these sections the penalty imposed was 500*l.*, but it is reduced to 100*l.* by the 7 & 8 Vict. c. 21, s. 4. See also *Roderick v. Hovill*, 3 Camp. 103. See as to where additional stamps may be imposed on mutual insurance policies the 9 Geo. 4, c. 49, s. 1.

(c) 35 Geo. 3, c. 63, s. 10.

(d) *Id.* s. 18, and 7 & 8 Vict. c. 21, s. 4.

(e) See the judgment in *Pattison v.*

M.P.

Mills, 2 Bligh, N. S. 562.

(f) See *post*, p. 340.

(g) 28 Geo. 3, c. 56. An earlier statute, the 25 Geo. 3, c. 44, which was repealed by this act, was passed to prevent the effecting of policies in blank, and required that the names of the persons interested, or of the agent who effected the policy, should be inserted. See *Cox v. Parry*, 1 T. R. 464, and *Pray v. Edie*, *ib.* 313.

(h) *Wolff v. Horncastle*, 1 B. & P. 316; *Lucena v. Craufurd*, 3 B. & P. 75; 2 N. R. 269; *Stirling v. Vaughan*, 11 East, 619; *Routh v. Thompson*, 13 East,

sary that an agent effecting the policy should be described in it as such (i).

Where a broker had received directions from the owner of goods to insure them, and being unable to do so caused the risk to be indorsed upon a general policy which had been previously effected by the agents of the broker, in their own names, upon goods "to be valued and declared as interest might appear," and this indorsement was initialed by the underwriter, and the goods owner was informed of it, it was held that the policy not having been made by the goods owner, or by any one authorized on his behalf at the time, and not having been ratified by him, he could not sue upon it (k).

The ship and master.

There is no express regulation in this country which requires that the name of the vessel, or of her master, shall be inserted in the policy; it has been usual, however, to insert the names, since a knowledge of them is often material for the estimation of the risk to be insured. A policy on a ship "called the American ship President, or by whatever other name the same ship should be called," was held to be a valid policy on a vessel which was an American ship, and of which the real name was "*The President*" (l).

The validity of insurances upon "ship or ships" has long been established; and it has been held that where a cargo is so insured, and several vessels are employed in its transportation, the assured may apply the insurance to any of them (m). It has been doubted whether such an insurance does not amount to a warranty that the party effecting it is ignorant of the name of the vessel; but however this may be, it is clear that if the effect of withholding the name is to deprive the underwriter of any

274; *Hagedorn v. Oliverson*, 2 M. & S. 485; *Barlow v. Leckie*, 4 J. B. Moore, 8; and see *Bell v. Janson*, 1 M. & S. 201, where it was held that a letter directing assurance could not be considered to be a ratification of an insurance which had been actually made at the time, but without the knowledge of the principal.

(i) *De Vignier v. Swanson*, 1 B. & P. 346, note. Where the persons interested were described as "the trustees of Messrs. K. & Co.," it was held that this might be considered to be their usual style and firm of dealing. *Hibbert v. Martin*, 1 Camp. 538. The statute does not prevent an assured from recovering

against persons who are engaged as partners in underwriting, though each has signed in his own name for a distinct sum. *Brett v. Beckwith*, 26 L. J., Chan. 130.

(k) *Watson v. Swann*, 11 C. B., N. S. 756. The Court in this case abstained from expressing any opinion as to whether an action could not have been maintained by the broker as trustee for his principal.

(l) *Le Mesurier v. Vaughan*, 6 East, 382, and *Hall v. Molinsaux*, cited *ib.* 385; see also *Clapham v. Cologan*, 3 Camp. 382.

(m) *Kewley v. Ryan*, 2 H. Bl. 343; *Henchman v. Offley*, *ib.* 345, note.

material information, the concealment avoids the policy (*n*). Where an insurance is on cargo it will extend, although the ship is named in the policy, to any other ship into which it may be properly shifted by the master (*o*).

After naming the ship and appurtenances, the policy, as we have seen, mentions the master. This portion of the policy is so simple, and the liberty given by it to the assured is so extensive, that no questions have arisen out of it, nor does it call for further notice.

The premium is the amount paid by the assured to the under- The premium.
writer, as a consideration for his undertaking the risk. The Stamp Act, 35 Geo. 3, c. 63, s. 11, requires that the premium "paid, given or contracted for upon the insurance," should be expressed in the policy. The broker is, as we have seen, the person to whom the underwriter looks for its payment (*p*). As between the assured and the underwriter, the receipt which is always inserted in the policy is conclusive evidence of the receipt of the premium by the latter (*q*); except, indeed, in the case of fraud (*r*).

The Stamp Act, 35 Geo. 3, c. 63, s. 11, requires also that the names of the subscribers and underwriters, and sums insured, should be expressed or specified on the policy; otherwise it is void. It is not necessary, however, that a policy underwritten by a company or co-partnership should be signed by every member; it is sufficient if it be subscribed in the name of the firm (*s*). The subscrip-
tion.

Any material alteration in a policy, as in any other contract, mercantile instrument, or deed, even although made by a stranger, has the effect of making it void, as against all parties who did not authorize the alteration (*t*). A person, therefore, Alteration of
policy at com-
mon law.

(*n*) *Lynch v. Hamilton*, 3 Taunt. 37, confirmed on error; *Lynch v. Dunsford*, 14 East, 494.

(*o*) *Plantamour v. Staples*, 1 T. R. 611, note. See of transhipment generally *ante*, p. 281, and *Oliverson v. Brightman*, 8 Q. B. 781.

(*p*) *Ante*, p. 334.

(*q*) *Dalsell v. Mair*, 1 Camp. 532; *De Gaminde v. Pigou*, 4 Taunt. 246.

(*r*) *Foy v. Bell*, 3 Taunt. 493; see

also *Mavor v. Simeon*, *ib.* 497.

(*s*) *Reid v. Allan*, 4 Ex. 326; *Dowdall v. Allan*, 19 L. J., Q. B. 41.

(*t*) *Master v. Miller*, 4 T. R. 320; *S. C.*, 1 Smith, L. C. (5th edit.) 776; *Fairlie v. Christie*, 7 Taunt. 416; *Campbell v. Christie*, 2 Stark. 64; *Forsshaw v. Chabert*, 3 B. & B. 158; *Davidson v. Cooper*, 11 M. & W. 778; *S. C.*, 13 M. & W. 343; *Crookswort v. Fletcher*, 1 H. & N. 893.

who desires a change in the terms of the policy should obtain the concurrence of the other parties to it before the insertion of the alteration. A material alteration, however, made by the assured cannot be set up by him, and will not entitle him to claim a return of premium (*u*). An alteration which is immaterial does not vacate the policy, and those parties who did not consent to it remain liable on the original contract (*v*). The most usual mode of making a material alteration in a policy is by a memorandum on the back of it; and the signatures or initials of the parties are commonly appended. If the alteration be required for the purpose of remedying an error, a Court of Equity will effect it without the consent of the parties (*w*); but the intention of the instrument must be apparent (*x*).

Under stamp
acts.

The 35 Geo. 3, c. 63, s. 13, enacts, that the provisions of that act shall not prevent "the making of any alteration which may lawfully be made in the terms or conditions of any policy of insurance, duly stamped as aforesaid, after the same shall have been underwritten," or render necessary "any additional stamp duty by reason of such alteration, so that such alteration be made before notice of the determination of the risk originally insured, and the premium or consideration originally paid or contracted for shall exceed the rate of ten shillings per cent. on the sum insured, and so that the thing insured shall remain the property of the same person or persons, and that such alteration shall not prolong the term insured beyond the period allowed by this act, and so that no additional or further sum shall be insured by reason or means of such alteration." This provision has received a liberal construction (*y*). A mistake made in the ship's name may be rectified (*z*); the time of sailing may be altered or extended (*a*); and a change of destination may be inserted, if made before notice of the determination of the risk (*b*). But where an insurance made upon "the ship and outfit" was afterwards altered by consent, by substituting the

(*u*) *Langhorn v. Cologan*, 4 Taunt. 330.

(*v*) *Sanderson v. M'Cullom*, 4 J. B. Moore, 5; *Sanderson v. Symonds*, 1 B. & B. 426.

(*w*) *Motteux v. London Assurance Company*, 1 Atk. 545.

(*x*) *Henkle v. Royal Exchange Assurance Company*, 1 Ves. 317.

(*y*) See *Brockelbank v. Sugrue*, 1 B. &

Ad. 88.

(*z*) *Robinson v. Touray*, 3 Camp. 158; 1 M. & S. 217; see *Cole v. Parkin*, 12 East, 471.

(*a*) *Kensington v. Inglis*, 8 East, 273; *Hubbard v. Jackson*, 4 Taunt. 169; *Weir v. Aberdeen*, 2 B. & A. 320; *Ridsdale v. Shedden*, 4 Camp. 107.

(*b*) *Ramstrom v. Bell*, 5 M. & S. 267; *Brockelbank v. Sugrue*, *ubi supra*.

words "the ship and goods," it was held that a new stamp was necessary (c). Where, however, a policy was effected, by mistake, on the goods instead of on the ship, and the parties never intended to enter into the contract in its original form, it was held that an alteration making the terms of the contract agree with the real intention of the parties did not render a new stamp requisite (d). A policy cannot be altered so as to bring it within a class requiring a higher duty (e).

Where the alteration renders a new stamp necessary the parties cannot recover upon the policy in its original state; since the alteration, although ineffectual to form a new agreement, proves an intention to abandon the former contract (f).

Where there is no complete delivery of a policy under seal to the assured, the insurers are not liable on it (g).

A policy of insurance is considered as a contract *uberrimæ fidei*, and always receives a liberal construction for the benefit of trade, and for the assured (h). The same rule of construction applies, however, to it as to all other instruments, namely, that it is to be construed according to its sense and meaning, as collected in the first place from the terms used in it, which terms are themselves to be understood in their plain, ordinary and popular sense, unless they have generally in respect to the subject-matter, as by the known usage of trade, or the like, acquired a peculiar sense distinct from the popular sense of the same words; or unless the context evidently points out that they must in the particular instance, and in order to effectuate the immediate intentions of the parties to that contract, be understood in some other special and peculiar sense (i). Where, therefore, the policy is ambiguous in its terms, or contains nothing which expressly rebuts the construction, it will be understood as referring to what is usually done by such a ship,

Construction of the contract.

(c) *Hill v. Potter*, 8 East, 373.

(d) *Sawtell v. Loudon*, 5 Taunt. 399.

(e) See the judgment of Lord Tenterden in *Brockelbank v. Sugrue*, 1 B. & Ad. 38.

(f) *French v. Patten*, 1 Camp. 721; *S. C.*, 9 East, 351.

(g) *Xenos v. Wickham*, 13 C. B., N. S. 381; *S. C.*, in Cam. Scacc., 14 C. B., N. S. 435. In this case the policy had been actually executed by the directors of the company, but had been retained

by them in their possession, and there was a difference of opinion between the judges in the Exchequer Chamber, as to whether, looking at the course of business, the policy had, in fact, been delivered or not.

(h) 2 W. Saund. 200, n. (1); and the judgment of Buller, J., in *Wolff v. Horncastle*, 1 B. & P. 322.

(i) Per Lord Ellenborough in *Roberts v. French*, 4 East, 135; see also *Trueman v. Loder*, 11 A. & E. 589.

with such a cargo, on such a voyage (*j*); for it is presumed that every underwriter is acquainted with the practice of the trade in which he insures (*k*). Thus, evidence was held to be properly received of a custom that, under the usual form of policy, underwriters are not liable for general average in respect of the jettison of goods stowed on deck (*l*).

If the usage is general, the policy is governed by it, although the trade which it affects is of recent origin (*m*). As, however, evidence of usage is admissible only upon the ground that the parties contracting are presumed to have been aware of its existence, and consequently to have entered into the policy subject to its effect, the usage must be general, either to all trades, or to the particular trade in respect of which the insurance is made. An usage, therefore, at Lloyd's is not binding upon an assured when it is not known to him, although his broker may have been aware of it (*n*). If the terms of a policy are plain and unambiguous, evidence of an usage which would contradict instead of explaining them is inadmissible. Thus, where a policy on a ship was in the usual form, including "boats," evidence of an usage not to pay upon a loss of boats slung outside upon the quarters of the vessel was excluded (*o*). So, where a policy stated that the insurance on the ship should continue until she was moored twenty-four hours, and on the goods till safely landed, it was held that evidence of an usage that the risk on the goods as well as on the ship expired in twenty-four hours was not admissible (*p*).

(*j*) See the judgment of Lord Mansfield in *Pelly v. The Royal Exchange Assurance Company*, 1 Burr. 350. In a recent case it was held, that the construction of a policy could not be varied by a correspondence between the assured and their agents who effected the insurance, which was not referred to in the policy, but of which the underwriters had notice, *Halhead v. Young*, 6 E. & B. 312.

(*k*) See *per* Lord Mansfield in *Noble v. Kennoway*, 2 Doug. 512; see also *Letheulier's Case*, 2 Salk. 443; *Salvador v. Hopkins*, 3 Burr. 1707; *Grant v. Paxton*, 1 Taunt. 463; *Robertson v. Clarke*, 1 Bing. 445; *Vallance v. Dewar*, 1 Camp. 603, and the cases cited *ib.* 505, note; *Chaurand v. Angerstein*, Peake, 43; *Gould v. Oliver*, 4 Bing. N. C. 134; *Milward v. Hibbert*, 3 Q. B. 120; *Lewis v. Marshall*, 7 M. & Gr. 729; and *ante*, p. 231.

(*l*) *Miller v. Tetherington*, 6 H. & N. 278; *S. C.*, in Cam. Scacc., 7 H. & N. 954.

(*m*) *Noble v. Kennoway*, *ubi supra*.

(*n*) *Gabay v. Lloyd*, 3 B. & C. 793; *Bartlett v. Pentland*, 10 B. & C. 760; *Scott v. Irving*, 1 B. & Ad. 605; *Stewart v. Aberdeen*, 4 M. & W. 211; *Mackintosh v. Marshall*, 11 M. & W. 116; *Partridge v. Bank of England*, 9 Q. B. 396; the judgment of Parke, B., in *Bayliffe v. Butterworth*, 1 Ex. 428; and *Sweeting v. Pearce*, 7 C. B., N. S. 449; *S. C.*, in Cam. Scacc., 9 C. B., N. S. 534.

(*o*) *Blackett v. The Royal Exchange Assurance Company*, 2 C. & J. 244; *Crofts v. Marshall*, 7 C. & P. 597; see also *Hall v. Janson*, 4 E. & B. 500; *Ross v. Thwaite*, *Backhouse v. Ripley*, cited in Park on Insurance.

(*p*) *Parkinson v. Collier*, Park on Insurance.

Parol evidence may be resorted to for the purpose of explaining words which, being technical or local, have acquired a peculiar meaning; as, for instance, words relating to the articles of commerce which form the cargo (*q*), or to the port (*r*), sea (*s*), or country to which the ship is bound (*t*).

If, as is usually the case, part of the policy is printed and part written, it has been held that the words superadded in writing are entitled to have a greater weight attributed to them than the printed words; inasmuch as the written words are considered as more immediately the language of the parties (*u*).

Thirdly, with respect to *open, and valued policies, and voyage, time, and mixed policies.*

OPEN, AND
VALUED POL-
ICIES.

A policy may be either *open* or *valued*. In the former the value of the subject-matter of the insurance is not stated in the policy, and must be proved after a loss. In the latter, to prevent the necessity of proving the actual value in the event of a loss, a value agreed upon by the parties is mentioned in the policy, and is conclusive between them in case of loss (*v*). A valued policy contains a clause to the following effect: "*The said ship, &c., goods and merchandize, &c., for so much as concerns the assureds, by agreement between the assureds and assurers in this policy, are and shall be valued at £* ." If the amount of the valuation is not inserted in the policy, but is stated to be as thereafter may be declared, and no declaration is made before a loss, the policy is not void, but is treated as an open policy (*w*).

Where the policy is valued, the insured, notwithstanding the 19 Geo. 2, c. 37 (*x*), is entitled to recover the whole valuation, although it exceeds his interest (*y*). If, however, it appears that

(*q*) *Scott v. Bourdillon*, 2 N. R. 213; *Mason v. Skurray*, Park on Ins. 191.

(*r*) *Constable v. Noble*, 2 Taunt. 403; *Payne v. Hutchinson*, *ib.* 405, note.

(*s*) *Brown v. Tayleur*, 4 A. & E. 241; *Uhde v. Walters*, 3 Camp. 16.

(*t*) *Moxon v. Atkins*, 3 Camp. 200; *Robertson v. Clarke*, 1 Bing. 445; see also *Parr v. Anderson*, 6 East, 207; *Robertson v. Jackson*, 2 C. B. 412, and *ante*, p. 231.

(*u*) See the judgment of Lord Ellenborough in *Robertson v. French*, 4 East, 136; also *Alsager v. The St. Katharine Dock Company*, 14 M. & W. 794. Where a policy is set out upon the record, and

comes in this form before the Court, no argument can be rested on this distinction, unless it is averred on the record that the difference exists. See the judgment of Parke, B., in the last-mentioned case.

(*v*) See the judgment of Lord Ellenborough in *Forbes v. Aspinall*, 13 East, 326.

(*w*) *Craufurd v. Hunter*, 8 T. R. 15, note; *Harman v. Kingston*, 3 Camp. 150.

(*x*) *Ante*, p. 333.

(*y*) *Lewis v. Rucker*, 2 Burr. 1167; *Shawe v. Felton*, 2 East, 114.

the valuation has been adopted as a mere cover to a wager (*z*), or that the value has been fraudulently misrepresented (*a*), the policy is void, and the insurer cannot recover even to the extent of his actual interest. Another effect of a policy being valued is that, in cases of constructive total loss, the assured may obtain in some events more than a compensation for his actual loss (*b*).

The general rule is, that where there are several insurances upon the same vessel, the valuation is conclusive only between the assured and the underwriters of that policy which contains the valuation. It is not enough for the underwriters on one of the other policies to show that the assured has received from another quarter the sum fixed by this valuation, unless this amounts to a real indemnity (*c*). Where, however, an owner effects two insurances, declaring the same value in each, he is bound by this sum, and cannot recover more on the two policies than the sum mentioned, although the real value of the vessel is more (*d*). And in a recent case it has been considered by the Court of Exchequer that where there are several valued policies on the same ship at different values, and the assured has, on a total loss, received under some of the policies part of the sums insured, he cannot, in an action upon another of the policies, recover more than the difference between the value mentioned in that policy and the sums he has actually received from the other insurers (*e*).

If the loss is only partial, the value in the policy must still be looked to as the basis of the calculation (*f*). This mode of valuation cannot, however, be applied to all cases of partial loss under policies which are, in form, valued. Thus, where a ship was to proceed to the coast of Africa on a barter voyage, and to bring back a cargo, and an insurance was effected

(*z*) See *per* Lord Mansfield in *Lewis v. Rucker*, 2 Burr. 1171.

(*a*) *Haigh v. De la Cour*, 3 Camp. 319.

(*b*) *Allen v. Sugrue*, 8 B. & C. 561; *Young v. Turing*, 2 M. & G. 593; *Manning v. Irving*, 1 C. B. 168; *S. C.* in error, 2 C. B. 784; 6 C. B. 391.

(*c*) *Bousfield v. Barnes*, 4 Camp. 228.

(*d*) *Irving v. Richardson*, 1 M. & Rob. 163.

(*e*) *Bruce v. Jones*, 1 H. & C. 769.

(*f*) *Lewis v. Rucker*, 2 Burr. 1171; see also the judgment of Lord Ellen-

borough in *Forbes v. Aspinall*, 13 East, 327; and in *Bousfield v. Barnes*, *ubi supra*; also *Rickman v. Carstairs*, 5 B. & Ad. 651. A contrary opinion obtained at one time, and it was argued that if the loss was only partial, the value must be proved as in an open policy. This rule appears to have been founded upon a dictum of Lee, C. J., cited in *Shaw v. Felton*, 2 East, 113, and is adopted in *Park on Ins.* 165. An able and elaborate refutation of this doctrine will be found in 1 Arnould on *Ins.* 357 (2nd edit.).

covering both cargoes at a value named, and the ship was totally lost before she took in any homeward cargo, with two-thirds of the outward cargo on board, it was held that the valuation mentioned in the policy applied substantially to a full cargo, and entitled the assured to the value named, only in the event of the loss of a substantially full cargo, and to an indemnity, in case of any partial loss, not exceeding that sum; and as the value of the whole intended cargo was, under the circumstances, unknown, the Court was of opinion that the ordinary mode of estimating a partial loss under a valued policy could not be adopted, but that the claim must be dealt with as if it were a claim to an ordinary indemnity under an open policy underwritten for the sum mentioned as the value of the whole cargo (g).

An insurance may be effected either for a voyage, or for a number of voyages, in either of which cases the policy is called a *voyage* policy; or the insurance may be for a particular period, irrespective of the voyage or voyages upon which the vessel may be engaged during that period, and the policy is then called a *time* policy. In other countries the length of the time for which a ship may be insured is not limited, but in England time policies made for a longer period than one year are, by statute, void *ab initio* (h).

VOYAGE,
TIME, AND
MIXED PO-
LICIES.

In addition to the two last-mentioned kinds of policy there is a third, which is usually called a *mixed* policy; as, for instance, where a ship is insured "from A. to B. for a year." This is in effect a time policy with the voyage specified, and runs for the whole period insured, irrespective of the completion or non-completion of the voyage. A policy of this description does not attach, unless the ship sails upon the voyage named (i); but although the insurance is limited to commence at a certain time, it is not necessary that the ship should be then in the port specified as the *terminus a quo* (k). Where a policy was effected on goods to the value of 12,000*l.*, in canal boats plying between London and Birmingham for twelve months, and the claim on the policy was warranted not to

(g) *Tobin v. Harford*, 13 C. B., N. S. 791.

(h) 35 Geo. 3, c. 63, s. 12.

(i) *Way v. Modighiani*, 2 T. R. 30.

(k) *Ib.*; see also *Martin v. Fishing Insurance Company*, 20 Pickering (American) Rep. 389, cited in Phillips on Ins., Chap. 11, s. 1.

exceed a certain sum per cent., and it was stipulated that a given amount only was to be covered by the policy in any one boat, or any one trip, it was held that this was a continuing insurance, and applied to successive cargoes carried within the year, although goods exceeding 12,000*l.* in value had been carried (*l*).

RE-INSURANCE AND DOUBLE INSURANCE.

Fourthly, as to *re-insurance* and *double insurance*. Re-insurance is where an underwriter procures the sum which he has insured to be insured again to him by another underwriter. This is allowed in all cases by the law of France, and of the other maritime countries of Europe (*m*), and also in America (*n*); but, by the law of England, the right to re-insure is limited by statute to cases in which the insurer is insolvent, becomes bankrupt, or dies. In the two former cases the underwriter himself, and in the latter his executors, may insure to the amount for which he insured, provided it is expressed in the policy to be a re-insurance (*o*). This provision applies to all insurances made in this country, whether on British or foreign ships (*p*). A mere parol transfer, however, of liability by one underwriter to another at a higher premium, in order to assign the intended benefit, is not prohibited by the statute (*q*).

Double insurance takes place when the same interest and the same risk is insured twice; a second insurance being often necessary where the precise value of the interest is not at first known. But if it appears, when the value of the interest becomes known, that there has been an over-insurance; that is to say, that the sum of the two or more insurances exceeds the interest of the assured, the excess cannot be recovered; for the insurance is, to this extent, an infringement of the rule against wagering policies. But although the assured is not entitled to be satisfied twice, yet he may proceed upon whichever of the policies he chooses, and may recover from one set of underwriters the whole sum insured, leaving the latter to sue the

(*l*) *Crowley v. Cohen*, 3 B. & Ad. 478.

(*m*) See 3 Kent Comm. 279; Arnould on Ins. 340, note (*c*), (2nd edit.).

(*n*) Kent Comm., *ubi supra*; Phillips on Ins., Chap. 3, s. 13.

(*o*) 19 Geo. 2, c. 37, s. 4. By the Bankrupt Act, 12 & 13 Vict. c. 106, s. 174, the assured may prove against a bankrupt underwriter, and receive dividends with the other creditors as if the

loss had happened before the fiat or petition, and the person effecting the policy may make such proof if the party interested is abroad.

(*p*) *Andree v. Fletcher*, 2 T. R. 161.

(*q*) *Delver v. Barnes*, 1 Taunt. 48. The point was not expressly decided in this case, but it does not appear to be doubtful.

other underwriters for contribution (*r*). We have already seen that where one only of several policies is valued, the assured is not bound in the others by the value named (*s*). The extent to which the underwriters are liable to return the premium where there is an over-insurance will be mentioned at the conclusion of this Chapter. In these cases payment by one of the insurers operates as a satisfaction by both (*t*).

Fifthly, as to *the subject-matter of insurance*. An insurance may be effected upon the ship or goods, or upon both; in the latter case the subject-matter is usually described by these words: "any kind of goods and merchandizes, and also upon the body, tackle, apparel, ordnance, munition, artillery, boat and other furniture, of and in the good ship or vessel, called the ———." SUBJECT-MATTER OF INSURANCE.
Ship, &c., and goods.

An insurance may also be effected upon profits expected to accrue from the cargo, and in such cases it is sufficient to use the word "profits" generally, without further specifying what they may be (*u*). They may be insured either by a valued (*v*) or an open policy (*x*). The assured must, however, show that he has an insurable interest (*y*), which had attached at the time of the loss (*z*); and that but for the loss which intervened, profits would have been realized (*a*). Where a consignor had purchased rice by a binding contract, and by a similar contract had resold it at a profit, and the vessel which was to carry it to the

(*r*) *Newby v. Reed*, 1 W. Bl. 416. The ruling of Lord Mansfield in this case is now always acted on in this country. 2 Park on Ins. 423; 1 Arnould on Ins. 346 (2nd ed.). A custom was, however, once proved to the contrary. See *The African Company v. Bull*, 1 Show. 132. The French rule is, that if the policies are made without fraud, and the first covers the whole value, it bears the whole loss, and the subsequent insurers are freed from liability on returning the premium, minus one-half per cent. Code de Comm., Art. 359. The convenience of some definite rule is so great, that in America the policy often contains a clause, providing that, if the assured shall have made any prior assurance, the subsequent assurers shall be answerable only for any deficiency not covered by it. See 3 Kent Comm. 282; Phillips on Ins., Chap. 14, s. 3.

(*s*) *Ante*, p. 344.

(*t*) *Morgan v. Price*, 4 Ex. 615.

(*u*) *Eyre v. Glover*, 3 Camp. 276; 16 East, 218. Such an insurance is within the operation of the 19 Geo. 2, c. 37; see *Smith v. Reynolds*, 1 H. & N. 221.

(*v*) *Grant v. Parkinson*, Park on Ins. 402; *Henricksen v. Margetson*, 2 East, 549, note; *Barclay v. Cousins*, *ib.* 544. See the judgment of Lawrence, J., in this case as to the foreign law on this subject.

(*x*) *Eyre v. Glover*, 2 Camp. 276.

(*y*) *Stockdale v. Dunlop*, 6 M. & W. 224.

(*z*) *Knox v. Wood*, 1 Camp. 543.

(*a*) *Hodgson v. Glover*, 6 East, 316. In the American Courts proof that profits would have arisen on the voyage, is not required if the cargo has been lost, *The Patapsco Insurance Company v. Coultas*, 3 Peters (Amer.), 222.

second vendee had been chartered, it was held that the consignor had an insurable interest in such profit, although a portion only of the rice had been shipped, and actually lost (*b*). As, however, the policy in this case limited the inception of the risk to "from and immediately following the loading" of the goods, it was held that the insurance applied only to profits arising from the rice actually put on board; and further, that even if the policy did attach to the profit of that portion of the rice which was left on shore, it only covered losses occasioned directly by perils of the sea, and not such as arose from the insurer being prevented, in consequence of the retardation of the voyage, from completing his contract of resale (*c*). Where profits were insured by a policy on goods "beginning the adventure upon the said goods and merchandizes from the loading thereof on board the said ship," and the ship was lost before she reached the port at which the cargo was ready to be shipped, it was held that the policy never attached, and that the owner of the cargo could not recover under it for the delay in the shipment of the cargo and consequent loss of profits (*d*).

Freight.

Freight, or the profit earned by the shipowner in the carriage of goods on board his ship (*e*), whether arising from a charter-party or the earnings of a general ship, may be insured either for the whole or a portion of the voyage; and this may be done by a time policy, though the freight is not to be earned till after the time expires. It must, however, be insured *eo nomine*, and is not covered by a policy on goods (*f*). Where an owner carries his own goods in his ship, the interest which he has by reason of his saving the amount he would have been obliged to pay for their carriage had not the ship been his own is covered by a policy on freight (*g*).

Freight paid before or during the voyage may also be insured

(*b*) *M'Swiney v. The Royal Exchange Assurance Company*, 14 Q. B. 634.

(*c*) *The Royal Exchange Assurance Company v. M'Swiney*, in Cam. Scacc., 14 Q. B. 646, overruling on this point the judgment of the Court below. See also *Chope v. Reynolds*, 5 C. B., N. S. 642, in which case the goods arrived without damage, but by a vessel into which they had been transhipped.

(*d*) *Halhead v. Young*, 6 E. & B. 312.

(*e*) See *per* Lord Ellenborough in

Forbes v. Aspinall, 13 East, 325, and *ante*, p. 268.

(*f*) *Michael v. Gillespy*, 2 C. B., N. S. 627; *Lucena v. Craufurd*, 2 N. R. 315. For instances of insurances on passage money subject to the provisions of the Passengers Act, 1852, see *Gibson v. Bradford*, 4 E. & B. 586; and *Willis v. Cooke*, 5 E. & B. 641.

(*g*) *Flint v. Flemyng*, 1 B. & Ad. 45; *Devaux v. Janson*, 5 B. & C. 519.

as freight advanced or money advanced on account of freight (*h*). So the interest of persons who have disbursed money for the use of the ship abroad, and taken in respect of their advances a bill of the captain's drawn against freight, may be insured as an advance on account of freight (*i*).

In accordance with the rule already mentioned (*h*), the assured, in order to recover upon the policy, must show that at the time of the loss he had an insurable interest in the freight. There is in practice, although not in principle, a material distinction on this head between the freight which accrues under a charter-party and that which may be earned by a general ship. In the former case the policy attaches as soon as the ship has sailed under the charter-party, for thereupon an inchoate right to freight arises, although no portion of the cargo may have been taken on board (*l*). In the case, however, of a general ship the policy does not usually attach until the goods are actually shipped (*m*), or at least until part of the goods is on board, and the residue is ready to be shipped (*n*); nor unless a binding contract has been entered into for the loading of the goods (*o*), and the vessel was in a condition to receive them (*p*). Where the owner of a ship bought a cargo which was seven miles from the port, but ready to be sent on board, and the ship, after being ready to receive the cargo, was lost in an endeavour to get her out of dock, it was held that a policy on freight attached (*q*). And where an owner having contracted to carry passengers, and to make alterations in his ship for their convenience, had shipped water for them, and commenced the alterations, it was held that this was an inception of the risk (*r*).

If the ship have part only of her cargo on board at the time of the loss, the owner can recover in respect of that part, even although the insurance be by a valued policy (*s*).

Where a policy is on freight advanced in respect of the whole

(*h*) *Ellis v. Lafone*, 8 Ex. 546; *Hall v. Janson*, 4 E. & B. 500. See also *post*, p. 350.

(*i*) *Wilson v. Martin*, 11 Ex. 684.

(*k*) *Ante*, p. 333.

(*l*) *Thompson v. Taylor*, 6 T. R. 478; *Atty v. Lindo*, 1 N. R. 236; *Horncastle v. Stuart*, 7 East, 400; *Davidson v. Wil-lasey*, 1 M. & S. 313.

(*m*) *Tonge v. Watts*, 2 Str. 1251.

(*n*) *Monigomery v. Eggington*, 3 T. R.

362; *Parks v. Hibson*, cited 2 B. & B. 326.

(*o*) *Forbes v. Aspinall*, 13 East, 323; *Flint v. Flemyng*, 1 B. & Ad. 46; *Patrick v. Eames*, 3 Camp. 441.

(*p*) *Williamson v. Innes*, 8 Bing. 81, note; *S. C.*, 1 M. & Rob. 88; *Devaux v. Janson*, 5 B. N. C. 519.

(*q*) *Devaux v. Janson*, *ubi supra*.

(*r*) *Truscott v. Christie*, 2 B. & B. 320.

(*s*) *Forbes v. Aspinall*, *ubi supra*.

Thus, a policy effected in England upon a voyage which is contrary to the navigation laws, or in breach of the customs laws of this country, is void (*o*). It is not necessary to mention more fully the cases depending upon the system established by the Navigation Acts, which are now repealed (*p*). With respect to contracts in violation of the customs laws, it has been held that if a small portion only of the goods insured be contraband the whole policy is vitiated, and the assured is precluded from recovering any part of his loss (*q*). And it is a general rule, that if there is an illegality in any part of an entire risk, the whole is thereby vitiated (*r*).

It has been often doubted how far the legality of an insurance ought to be affected by the fact that it is designed to cover a voyage in contravention of the revenue laws of a foreign state; that is to say, of a country other than that in which the policy is underwritten. Upon this point the most eminent jurists have differed (*s*). In England it has long been settled, that although all subjects are bound by the revenue laws of their own country, they owe no duty to similar laws of another state; so that an insurance upon a smuggling voyage, prohibited only by the laws of the country to which the ship may be trading, is valid, pro-

ston v. Sutton, Doug. 354. In cases of violation of statutory provisions as to convoy, it must be shown, if the policy was effected by an agent, that the assured authorized the infringement of the statute. *Carstairs v. Allnutt*, 3 Camp. 497; *Metcalf v. Parry*, 4 Camp. 125; *Thornhill v. Lance*, *ib.* 231.

(*o*) See *Morck v. Abel*, 3 B. & P. 35; *Chalmers v. Bell*, *ib.* 604; *Lubbock v. Potts*, 7 East, 449; *Gray v. Lloyd*, 4 Taunt. 136; *Campbell v. Innes*, 4 B. & A. 426; *Thompson v. Irving*, 7 M. & W. 367; *Suart v. Powell*, 1 B. & Ad. 266. All these cases were decided upon statutes which are now repealed; but the principles laid down in them may still be useful in determining what is such an illegal trading as to invalidate an insurance. In *Cunard v. Hyde*, 1 E. B. & E. 670, it was held that the sailing of a ship from her port of loading, in contravention of customs laws, did not prevent the owner of the cargo, who was not aware of the irregularity, from recovering on a policy on the cargo and freight. Where the owner of the cargo is aware of the illegal act he cannot recover. *Cunard v. Hyde*, 2 E. & E. 1.

(*p*) *Ante*, p. 17.

(*q*) *Parkin v. Dick*, 2 Camp. 221; *S. C.* 11 East, 502; *Camelo v. Batten*, 4 B. & A. 184. It has been held, however, that when a licence to carry prohibited goods has been obtained, and more are loaded than are covered by the licence, the insurance is valid in respect of the goods covered by the licence. See *Keir v. Andrade*, 6 Taunt. 498; *Butler v. Allnutt*, 1 Stark. 222; see also *Pieschell v. Allnutt*, 4 Taunt. 792.

(*r*) *Wilson v. Marryat*, 8 T. R. 31; *Bird v. Appleton*, *ib.* 562; *Lubbock v. Potts*, 7 East, 449; *Bird v. Pigou*, 2 Selw. N. P. 1006; *Cunard v. Hyde*, 2 E. & E. 1.

(*s*) Pothier, Kent, Story, and Marshall maintain that such insurances are illegal, on the principle that those who engage in foreign commerce are bound by the law of nations to act in obedience to the rules of the country in which they transact business. On the other hand, Valin, Emerigon, and Pardessus, uphold the legality of these contracts, upon the ground that they are sanctioned by usage, and Mr. Arnould has in his valuable Treatise on Insurance Law, adopted this view. See 1 Arnould on Ins. 744 (2nd edit.).

vided the object of the voyage is known to the underwriter (*t*). A similar doctrine has also prevailed in America (*u*).

It has been already mentioned, in treating of the national character of the assured, that insurances effected in a belligerent country upon the property of an enemy are void (*v*). Insurances by neutrals, in a neutral country, upon goods which are the property of subjects of a belligerent state, or upon contraband of war (that is to say, stores or provisions which are destined for one of the belligerent powers) (*w*), have also been considered by some authorities to be void, as contrary to the law of nations (*x*). It has, however, been decided, both in this country and in America, that the carrying of enemies' goods, not being contraband of war, by a neutral ship is a lawful act, and, consequently, these adventures may be insured (*y*). But, although the neutral is not liable to punishment in his own country for contraband trading, the goods he carries may be seized by the opposite belligerent power, and in ordinary cases the whole cargo is forfeited to the captors, if any portion of it consists of contraband of war; it is therefore necessary, in order to render these insurances valid, that the nature of the trade and of the goods should be disclosed to the underwriter (*z*).

Contraband of war.

Sixthly, as to the voyage, and the effects of delay and deviation.

THE VOYAGE.

It has been said that if the port to which the vessel is to sail is not named, the policy will be void for uncertainty (*a*); but however this may be, the voyage should be accurately described; since the inception and termination of the risk is usually limited by this part of the policy (*b*).

Description of in policy.

If the insurance is merely "from" a port, the vessel is not

(*t*) *Planché v. Fletcher*, 1 Doug. 251; *Lever v. Fletcher*, 1 Park on Ins. 360. In the former of these cases such an insurance was held valid, although fictitious papers were used to carry out the purpose of the scheme.

(*u*) 3 Kent Comm. 266.

(*v*) *Ante*, p. 332.

(*w*) See *The Endraught*, 1 Rob. 21, and the judgment of Sir W. Scott in *The Sarah Christina*, *ib.* 241; see also *The Two Juffrowen*, 4 Rob. 242; *The Charlotte*, 5 Rob. 275; *The Richmond*,

ib. 325; and *ante*, p. 280, note (*q*).

(*x*) Phillips on Ins. c. 3, s. 2, and the authorities there cited.

(*y*) *Barker v. Blakes*, 9 East, 283; see also *Richardson v. Maine Insurance Company*, 6 Mass. (American) Rep. 114, 115, cited 3 Kent Comm. 268.

(*z*) See the judgment of Sir W. Scott in *The Charlotte*, 5 Rob. 277.

(*a*) Molloy, B. 2, c. 7, s. 14.

(*b*) *Robertson v. French*, 4 East, 130; *Langhorn v. Hardy*, 4 Taunt. 628; *Udde v. Walters*, 3 Camp. 16.

protected unless she actually sails (c); if it is "at and from" the port, she is protected during her continuance there (d). In policies upon goods it is usual to name the period at which the risk is to attach. Where it is stated to be "from the loading thereof" at a particular place, goods which have been previously put on board at another port, as a portion of the outward cargo, are not protected (e). But where goods laden at one port are discharged and re-laden at another in order to allow the vessel to refit, they are covered by a policy which describes the latter port as the port of loading in the voyage, as "at and from" that port (f). If the place of loading is not named, it will be intended to be a loading at the place where the voyage is to commence (g). This strict construction has, however, been relaxed where there is anything on the face of the policy to show that the intention was to cover goods previously on board, as where the policy was declared to be "in continuation of others," which others included a voyage to the port of lading (h). And the same construction was put on a policy which expressed that the insurance was to commence from the loading, "wheresoever," &c. (i).

The words "at and from" a particular island or coast, protect a vessel whilst she is going from port to port in such island or coast, for purposes connected with the voyage (j), as, for instance, for the purpose of discharging an outward cargo (k); of loading a homeward cargo; or of joining convoy (l). If, however, a vessel is insured to sail from a particular place, which is named in the policy, she will not be protected if she sail from a different place, although it be within the same port (m). Where a ship was insured "at and from her port of lading," and she began to load her cargo at one place, and then proceeded to another

(c) As to what amounts to "sailing," "commencement of voyage," see *Roe-lands v. Harrison*, 9 Ex. 444; *Thompson v. Gillespie*, 5 E. & B. 209, and *Hudson v. Bilton*, 6 E. & B. 565.

(d) *Motteux v. The London Assurance Company*, 1 Atk. 545; *Rotch v. Edie*, 6 T. R. 413; *Palmer v. Marshall*, 8 Bing. 79; *Williamson v. Innes*, ib. 81, note.

(e) *Robertson v. French*, and *Langhorn v. Hardy*, 4 Taunt. 268; *Horney v. Lushington*, 15 East, 46; *Mellish v. Allnutt*, 2 M. & S. 106; *Rickman v. Carstairs*, 5 B. & Ad. 651.

(f) *Nonnen v. Kettlewell*, 16 East, 176, and *Carr v. Montefiore*, 33 L. J.,

Q. B. 57.

(g) *Spitta v. Woodman*, 2 Taunt. 416.

(h) *Bell v. Hobson*, 16 East, 240.

(i) *Gladstone v. Clay*, 1 M. & S. 418.

(j) See the judgment of Lord Mansfield in *Bond v. Nutt*, 2 Cowp. 606.

(k) *Warre v. Miller*, 4 B. & C. 538.

(l) *Cruickshank v. Janson*, 2 Taunt. 301; see also the judgment of Park, J., in *Forshaw v. Chabert*, 3 E. & B. 165.

(m) *Constable v. Noble*, 2 Taunt. 408. Even although the name of the place is the same as that of the port within the bounds of which it is included. *Ib.*; see also *Payne v. Hutchinson*, ib. 405, note.

several miles distant in the same creek, but not on the direct route of her voyage, and these places were not shown to constitute one port, although they were within the district of the same custom house, it was held that this was not authorized by the terms of the policy (*n*).

The words "at and from" a port imply, either that the ship is at the port mentioned, or that she will be there so soon after the time mentioned as not materially to vary the risk (*o*). They also imply that she will arrive in such a condition as to enable her to lie in reasonable security. It is not necessary that she should arrive in such a state as to be then seaworthy for the voyage, but she must have been once at the place in good safety. If, therefore, she arrives at the outward port so shattered as to be a mere wreck, the policy never attaches (*p*). This undertaking applies, however, only to the physical condition of the vessel; therefore, where a ship, on her arrival in safety at the port "at and from" which she was insured, was seized and condemned by a foreign government on account of political causes, it was held that the policy had attached (*q*).

Having considered the cases which relate to the commencement of the voyage, or the *terminus a quo*, we will now mention those which relate to its conclusion, or *terminus ad quem*; leaving the decisions as to the intermediate passage to be considered under the head of *deviation*.

If the voyage be described as to a country generally, it terminates upon the arrival of the ship at any port in that country (*r*). If it be stated to be a port or ports in a particular district, the voyage continues until the vessel arrives at her last port of discharge in that district. If, however, her unloading at this port is rendered impracticable, as by an embargo or the like, the policy will be exhausted when the ship has put into the last port in the district named which she can make with safety (*s*). Where a ship was insured "at and from St. Vincent, Barbadoes, and all or any of the West Indian Islands, to her port or ports of discharge and loading in the United Kingdom,

(*n*) *Brown v. Tayleur*, 4 A. & E. 241.

(*o*) *Hull v. Cooper*, 14 East, 479; see also *Mount v. Larkins*, 8 Bing. 108; *Motteux v. The London Assurance Company*, 1 Atk. 548.

(*p*) See the judgment of Lord Ellen-

borough in *Parmeter v. Cousins*, 2 Camp. 235.

(*q*) *Bell v. Bell*, 2 Camp. 475.

(*r*) *Camden v. Cowley*, 1 W. Bl. 417.

(*s*) *Brown v. Vigne*, 12 East, 283; but see *Oliver v. Brighman*, 6 Q. B. 783.

during her stay there and thence back to Barbadoes, and all or any of the West Indian colonies, until the ship should have arrived at her final port as aforesaid," it was held, that the adventure terminated at the place in the West Indian colonies where she substantially discharged her cargo from this country (*t*).

In order to prevent questions arising as to the duration of insurances after the arrival of the ship at her port of discharge, a provision is not unfrequently inserted that the insurers' liability shall continue until she is at anchor twenty-four hours in good safety. Under these words she is protected if arrested on her arrival in the port, or ordered back to perform quarantine (*u*). It has been said, that if a ship insured upon these terms to any particular port of delivery is forced by stress of weather into a different port and there discharges part of her cargo, and afterwards proceeds to her port of delivery, the policy remains good; but that where the policy is general to a particular country, and the vessel comes to a port, and there voluntarily remains and discharges part of her cargo, the policy, whether on ship or goods, expires after she has remained there twenty-four hours (*x*). Even where the policy includes the above provision, doubts may arise as to whether the place at which the vessel is moored can be considered as her destination. This question may be affected by the state of the tide, the general usage of the port, or even by the intention of the master. Thus, where a vessel insured to London, by a policy containing these terms, was moored for several days in the Thames, outside one of the docks into which the captain intended to take her, but he was prevented from so doing by ice in the river, it was held that the underwriters were liable for an injury which occurred to her whilst she was moving towards the dock; since, although she had been anchored more than twenty-four hours, it was not at her place of destination (*y*). In a more recent case, however, a vessel similarly insured, from Liverpool to Quebec and back to her discharging port in the United Kingdom, was chartered from Quebec with a cargo of timber to be discharged in Wallasey Pool, in the river Mersey. She arrived in the Mersey, and on the following day was towed

(*t*) *Moore v. Taylor*, 1 A. & E. 25.

(*u*) *Waples v. Eames*, 2 Str. 1243; *Minett v. Anderson*, Peake, 211; *Horney v. Lushington*, 15 East, 46.

(*x*) See the ruling of Lord Kenyon in *Leigh v. Mather*, 1 Esp. 412.

(*y*) *Samuel v. The Royal Exchange Assurance Company*, 8 B. & C. 119.

up to the entrance of Wallasey Pool, but being unable to enter, by reason of her drawing too much water, the captain anchored, and after reporting the vessel, discharged the deck cargo, and a considerable portion of the other cargo, which proceedings occupied several days. The ship then fell over, and sustained damage. The captain always intended to take her into Wallasey Pool with as much cargo on board as she could carry with safety. Upon these facts it was held that the underwriters were not liable, as the vessel had arrived as near to Wallasey Pool as she could safely get, had begun to discharge her cargo, and had been moored in safety twenty-four hours after her arrival at her port of discharge (z).

In all these cases the question is one of fact, depending upon the custom and usage of the port and the nature of the voyage (a).

Where the insurance is on goods, the policy usually provides that they shall be protected until they are "discharged and safely landed." The goods are, in this case, protected even whilst in public lighters, if this is the usual mode of landing them (b); unless the consignee by some act of his own, as by undertaking the charge of landing them himself, discharges the insurer (c).

It is of the essence of an insurance upon a voyage that there should be no unreasonable delay in its commencement, or deviation in its prosecution; and if either occur without a sufficient cause, the underwriter is discharged. With regard to delay in the commencement of the voyage, the assured impliedly undertakes that the vessel will sail within a reasonably short time (d). What is a reasonable time must be determined by the existing state of things at the port where the ship may be. It has been held that the fact that the vessel insured was a yacht, a kind of vessel which does not usually go to sea during the winter, formed no excuse for a delay in sailing which continued from January to May (e). But a delay during the voyage, which

Delay and its effects.

(z) *Whitwell v. Harrison*, 2 Ex. 127.

(a) *Lindsay v. Janson*, 4 H. & N. 699. See also *Parker v. Winlow*, 7 E. & B. 942.

(b) *Hurry v. The Royal Exchange Assurance Company*, 2 B. & P. 430; *Rucker v. The London Assurance Company*, ib. 432, note; *Matthis v. Potts*, 3 B. & P. 23.

(c) *Strong v. Nataly*, 1 N. R. 16; *Sparrow v. Carruthers*, 2 Str. 1236.

(d) *Palmer v. Marshall*, 8 Bing. 317; *Mount v. Larkins*, ib. 108.

(e) *Palmer v. Marshall*, *ubi supra*; *Palmer v. Fenning*, 9 Bing. 462. In these actions, which arose out of the same insurance, the Court observed, that

arises from causes over which the assured have no control (*f*), or which is necessary for the purpose of repairing (*g*), or of procuring a sufficient crew (*h*), or of obtaining a cargo (*i*), or indeed, for any other reasonable purpose, requisite for carrying out the object of the adventure, is allowable (*k*). Where a provision is contained in the policy regulating the delay to be allowed, the underwriter is discharged if this time be exceeded. Thus, where a policy gave liberty "to wait two months at Monte Video if needful," it was held that the assured was restricted to two months; and that a delay beyond that time, although for a necessary cause, discharged the underwriter (*l*).

Deviation and its effects.

The underwriters are also discharged by an improper deviation from the usual course of the voyage. The objection to a deviation is, not that the risk is increased, but simply that one of the parties contracting has voluntarily substituted another voyage for that which has been insured (*m*). If liberty be reserved to call at one port, the assured may not call at another, although it is not more out of the usual course of the voyage; for every wilful deviation determines the policy, and it is immaterial from what cause, or at what place, the subsequent loss arises (*n*).

Whether any particular alteration of the voyage is such a deviation as will discharge the underwriters is a question of fact which depends upon the description of the voyage in the policy, upon the ordinary and understood mode of performing it, and upon the terms of any warranty or representation which is capable of being attached to the contract (*o*). It may, however,

the owner might have protected himself by insuring "in port and at sea."

(*f*) *Samuel v. The Royal Exchange Assurance Company*, 8 B. & C. 119; *Schroder v. Thompson*, 7 Taunt. 462.

(*g*) *Smith v. Surridge*, 4 Esp. 25.

(*h*) *Grant v. King*, *id.* 175.

(*i*) *Phillips v. Irving*, 7 M. & G. 328. In this case the voyage was a seeking voyage.

(*k*) See the cases cited above. A delay, however, for the purpose of avoiding a peril not insured against, although requisite for carrying out the adventure, would not be allowable. See *post*, p. 360. Excusable delays may also occur when it is necessary to lie by another ship after a collision. For not only is this an obvious duty, but it

is expressly provided by s. 33 of the M. S. A. Amendment Act, 1862, that in every case of collision it shall be the duty of the person in charge of each ship to render to the other ship all the assistance that may be practicable and necessary, and that can be rendered without danger to his own ship or crew.

(*l*) *Doyle v. Powell*, 4 B. & Ad. 267.

(*m*) See the judgment of Lord Mansfield in *Lavabre v. Wilson*, 1 Doug. 291; *S. C.*, Park on Ins. 465.

(*n*) *Elliot v. Wilson*, 4 Brown, P. C. 470; *Clason v. Simmonds*, cited 6 T. R. 533.

(*o*) See *Lindsay v. Janson*, 4 H. & N. 699, and the cases cited on the next page.

be said generally, that any unnecessary departure from the shortest, or most usual course, and any improper or unaccustomed stoppage at a port, is a deviation (*p*). But neither a mere intention to deviate (*q*), nor a variation of the original design of the voyage, as by taking on board additional goods, if neither delay nor increase of risk arises, and the course of the voyage is not affected, will avoid the insurance (*r*).

Questions analogous to those which we have been considering have arisen in time of war, as to the effect of carrying letters of marque, which hold out a temptation to deviate. It was at one time held that the mere taking a letter of marque on board, in opposition to the positive directions of the underwriters, vitiated the policy (*s*); but later cases show that this is not so, at all events where there is no intention of using them (*t*). And in America it has been expressly held that the mere fact of the vessel taking letters of marque, without the leave of the underwriter, does not affect the policy (*u*). If, however, a vessel, in the use of the letters of marque, goes out of the proper course for the purpose of cruising, this clearly amounts to a deviation (*x*).

As in the case of delay, so in that of deviation, if it arise from one of the perils insured against, or is necessary for the purposes of the voyage, or proceed from a cause over which the assured or his agents have no control, the insurance is not affected by it. Thus, if the deviation is caused by stress of weather (*y*), by the barratry of the master (*z*), or by a refusal of the crew to proceed (*a*), or if the ship is carried out of her course by a King's ship, the underwriter is still liable (*b*). To excuse

When excused.

(*p*) See *Davis v. Garrett*, 6 Bing. 725. If there are different courses by which the voyage insured may be accomplished, the underwriter is entitled to the benefit of the master's judgment as to which of them is most expedient; and if the master, by the instructions of the shipowner, pursue one of these courses, and the fact of these instructions is not communicated to the underwriter, the policy will be vitiated on the ground of the variation of the risk, or of an improper concealment. *Mid-dlewood v. Blakes*, 7 T. R. 162.

(*q*) *Kewley v. Ryan*, 2 H. Bl. 343.

(*r*) *Raine v. Bell*, 9 East, 195; *Larocche v. Oswin*, 12 East, 131, overruling *Sitt v. Wardell*, 2 Esp. 610, and *Sheriff v. Potts*, 5 Esp. 96; see also *Ashley v.*

Pratt, 16 M. & W. 471; 1 Ex. 257.

(*s*) *Denison v. Modigliani*, 5 T. R. 580.

(*t*) *Moss v. Byrom*, 6 T. R. 379; see also the judgment of Lawrence, J., in *Raine v. Bell*, 9 East, 201, and the observations of Lord Ellenborough in *Jarratt v. Ward*, 1 Camp. 263.

(*u*) *Wiggin v. Amory*, 13 Mass. (American) Rep. 118; *Wiggin v. Boardman*, 14 ib. 12.

(*x*) *Jolly v. Walker*, 2 Park on Ins. 448.

(*y*) *Harrington v. Halkeld*, 2 Park on Ins. 455.

(*z*) *Vallejo v. Whesler*, 1 Cowp. 148.

(*a*) *Driscoll v. Bovil*, 1 B. & P. 313.

(*b*) *Scott v. Thompson*, 1 N. R. 181.

the deviation, however, it must take place under compulsion, physical or moral. Where a merchant vessel put to sea after an enemy's ship, in accordance with the orders of a King's officer, but it did not appear that any compulsion or threat had been used, it was held that no sufficient excuse for a deviation had been established (c). A deviation is excused also if the master goes out of the way *ex justa causâ*, as to refit, or to avoid enemies, or pirates (d), or the operation of an embargo (e), or for the purpose of joining convoy (f), or for any other cause which renders the deviation necessary for the safety of the ship, and which is not expressly excluded by the terms of the policy (g); unless, indeed, this cause is one of the perils not insured against (h). And if the ship is in a decayed or injured condition, she may put into the nearest port for the purposes of repair (i).

In addition to the above justifiable causes of deviation, it has been considered, of late years, although it can scarcely be said to have been decided in this country, that a vessel may depart from her course in order to succour a ship in distress, and to save the lives of those on board (k).

A deviation is not justifiable if it be made to avoid a peril which is not insured against (l); nor will a deviation by reason of necessity be excused, if the immediate cause of the necessity is the negligence or want of caution of the owners (m). In cases of deviation by necessity, nothing more must be done than the necessity requires (n). Therefore, where a ship endeavouring to avoid an embargo, had an opportunity of entering a neighbouring friendly port, but instead of availing herself of it, she sailed back to her port of outfit, the underwriters were held to be dis-

(c) *Phelps v. Auldjo*, 2 Camp. 350.

(d) *Per* Lord Mansfield in *Pelly v. The Royal Exchange Assurance Company*, 1 Burr. 350; *Driscoll v. Passmore*, 1 B. & P. 200.

(e) *Blackenhagen v. The London Assurance Company*, 1 Camp. 454.

(f) *Gordon v. Morley*, 2 Str. 1265; *Bond v. Gonzales*, 2 Salk. 445; *Bond v. Nutt*, 2 Cowp. 601; *Warwick v. Scott*, 4 Camp. 62.

(g) See *per* Gibbs, C. J., in *D'Aguilar v. Tobin*, Holt, 185.

(h) See *post*, p. 362.

(i) *Motteux v. The London Assurance Company*, 1 Atk. 545.

(k) See the judgments of Lawrence, J., in *Lawrence v. Sydebotham*, 6 East,

54, and of Sir C. Robinson in *The Jane*, 2 Hagg. 345. In America the same rule has been acted upon in some cases. See 3 Kent Comm. 313; Phillips, on Ins. c. 12, s. 1. But it has been distinctly decided in that country, that the right to deviate cannot be extended to cases where the object is merely to save property. *The Henry Eubank*, 1 Sumner (American) Rep. 400; *The Schooner Boston*, ib. 328.

(l) *O'Reilly v. The Royal Exchange Assurance Company*, 4 Camp. 246; *Forshaw v. Chabert*, 3 B. & B. 158.

(m) *Woolf v. Claggett*, 3 Esp. 257.

(n) *Per* Lord Mansfield in *Lavabre v. Wilson*, 1 Doug. 291.

charged (o). If a ship is driven by storm into a port out of her voyage, she is not bound to return back to the point whence she was driven, if she does her best to proceed to her port of destination; and if no time is lost by so doing, she may take in cargo at the intermediate port (p).

A deviation which would otherwise discharge the underwriters may also, in accordance with a principle already noticed (q), be justified by an usage or custom which is so notorious, that it must be presumed to have been known to the insurers when they underwrote the policy. Thus, in voyages to the East Indies and back, by vessels in the employment of the East India Company, an intermediate voyage made by order of the council in accordance with a practice then usual, was held to be no deviation (r). A liberty of a similar kind has also been recognized in respect of ships trading to Newfoundland (s).

Express reservations in the policy, by which the vessel is permitted to depart from the ordinary course of the voyage, have usually been construed strictly as against the assured, and have been confined to such deviations as are consistent with the general objects and purposes of the voyage. Thus, where leave was given to carry letters of marque, and to chase, capture, and man prizes, it was held that this did not justify the ship in shortening sail and lying-to several times on the voyage, in order to allow a prize which she had captured to come up and keep company with her (t). Where permission is given to touch at different ports, the ship may omit some of them (u); but if she goes to more than one, she must visit them in the order described in the policy (x), unless it appear clearly from the whole scope of the adventure, or from the expressions used in the policy, that it was not intended to indicate the order in which the ship must proceed, but merely to describe the district comprehending all the ports and places which she might visit (y). This liberty to touch is also available only for pur-

(o) *Blackenhagen v. The London Assurance Company*, 1 Camp. 454.

(p) *Delaney v. Stoddart*, 1 T. R. 22.

(q) See ante, p. 341, and *Bond v. Gonzales*, 2 Salk. 445.

(r) *Salvador v. Hopkins*, 3 Burr. 1707; *Gregory v. Christie*, 1 Park on Ins. 83; *Farquharson v. Hunter*, ib. 84; *Grant v. Paxton*, 1 Taunt. 463.

(s) *Vallance v. Dewar*, 1 Camp. 503.

(t) *Lawrence v. Sydebotham*, 6 East,

45; see also *Jarratt v. Ward*, 1 Camp. 263; *Hibbert v. Halliday*, 2 Taunt. 428.

(u) *Marsden v. Reed*, 3 East, 572.

(z) *Marsden v. Reed*, ubi supra; see also *Beatson v. Haworth*, 6 T. R. 531; *Gairdner v. Senhouse*, 3 Taunt. 16.

(y) *Metcalfe v. Parry*, 4 Camp. 123; *Bragg v. Anderson*, 4 Taunt. 229; *Ashley v. Pratt*, 16 M. & W. 471; 1 Ex. 257.

poses connected with, and subordinate to, the voyage insured. Calling at a port, therefore, for any other purpose, notwithstanding the policy may contain very general terms, as, for instance, that the ship may touch "for all purposes whatsoever," has been held to avoid the insurance (*z*). A liberty, however, to touch, or to touch and stay, will authorize the discharging or taking in of cargo, provided this is not inconsistent with the general purposes of the voyage, and does not increase or vary the risk (*a*).

If the vessel sails upon the voyage insured, and deviates during the course of it, the assured may recover for a loss which happens before she reaches the dividing point (*b*). Thus, where a policy was effected on goods from Liverpool to London, and the ship, without any permission to do so, put into Southampton to discharge a portion of the cargo, it was held that until she reached Southampton the goods were protected by the policy (*c*).

It has been already said that a mere intention to deviate will not affect the policy (*d*). On the other hand, however, the policy is discharged if the master never intended to sail on the voyage insured, although the loss may occur before she arrives at the deviating point. Thus, where the insurance was on a voyage from Maryland to Cadiz, and the captain, when he sailed, had no intention of going to that place, it was held that the policy was discharged, although the vessel, when captured, was in the course from Maryland to Cadiz, and had not reached the point at which she would have diverged to go to the place for which she was actually destined (*e*).

PERILS INSURED
AGAINST.

Seventhly, as to *the perils insured against*. We have seen in what terms these perils are usually described in the policy (*f*).

(*z*) *Langhorn v. Allnutt*, 4 Taunt. 511; *Williams v. Shee*, 3 Camp. 469; *Hammond v. Reid*, 4 B. & A. 72; *Solly v. Whitmore*, 5 B. & A. 45; *Bottomley v. Bowill*, 5 B. & C. 210. The following are cases in which the staying or trading has been held authorized by the terms of the policy. *Urquhart v. Barnard*, 1 Taunt. 450; *Cormack v. Gladstone*, 11 East, 347; *Violet v. Allnutt*, 3 Taunt. 419; *Rucker v. Allnutt*, 15 East, 278; *Armet v. Innes*, 4 Moore, 150; *Leathly v. Hunter*, 7 Bing. 517; *Warre v. Miller*, 4 B. & C. 539. See also the cases cited in note (*r*), *ante*,

p. 359.

(*a*) *Raine v. Bell*, 9 East, 195; *Cormack v. Gladstone*, *ubi supra*.

(*b*) *Green v. Young*, 2 Salk. 444; *Carter v. The Royal Exchange Assurance Company*, cited 2 Str. 1249; *Heselton v. Allnutt*, 1 M. & S. 46.

(*c*) *Hare v. Travis*, 7 B. & C. 14.

(*d*) *Thellusson v. Fergusson*, 1 Doug. 361; *Kewley v. Ryan*, 2 H. Bl. 343; see also *ante*, p. 359.

(*e*) *Woolridge v. Boydell*, 1 Doug. 16; *Way v. Modigliani*, 2 T. R. 30.

(*f*) *Ante*, p. 335.

We will consider them in the order in which they are mentioned; observing, that in all inquiries as to whether a particular peril falls within the description in the policy, it is a leading principle that the *proximate* and not the *remote* cause is to be looked to (*g*).

The words "perils of the sea" apply only to losses of which the operative cause occurs while the ship is at sea, or in a place where the tide flows. They do not include an injury done whilst the vessel is hove down on a beach within the tide-way (*h*), or in a graving dock (*i*). Nor do they apply to all perils which may happen on the sea (*j*); but to such of these accidents only as are caused by the violence of the wind or waves, by thunder and lightning, by driving against rocks, by the stranding of the ship, or the like (*k*). Where an electric cable was injured prior to the shipment and commencement of the risk, and consequently after its immersion the sea-water penetrated to the interior, and destroyed the insulation of the wire, it was held that this chemical action of the water on the defective cable was not an injury which could be properly referred to "perils of the sea;" since it did not arise from the external action or mechanical violence of the winds or waves, but was the natural and necessary consequence of the ordinary action of the sea-water on the defective outer covering of the cable (*l*).

The underwriters are liable, under these words, in respect of animals which are killed or damaged by the motion of the vessel during a storm (*m*), and for injuries which arise from a ship's taking ground in a tidal harbour, owing to an accidental and

(*g*) *In jure non remota causa sed proxima spectatur*, Bacon's Max. 1, where it is said, "It were infinite for the law to judge the causes of causes, and their impulsions one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree." See also *Heyman v. Parish*, 2 Camp. 149; *Green v. Elmslie*, Peake, 278, 8rd edit.; *Hodgson v. Malcolm*, 2 N. R. 336; *Sadler v. Dixon*, 8 M. & N. 895; *Naylor v. Palmer*, 8 Ex. 739; 10 Ex. 382; *Thompson v. Hopper*, 6 E. & B. 937, and the cases cited below, which illustrate this rule.

(*h*) *Thompson v. Whitmore*, 3 Taunt. 227; *Magnus v. Buttemer*, 11 C. B. 876.

(*i*) *Phillips v. Barber*, 5 B. & A. 161.

(*j*) See the judgment of Lord Ellenborough in *Cullen v. Butler*, 5 M. & S. 464.

(*k*) 1 Park on Ins. 102.

(*l*) *Paterson v. Harris*, 1 B. & S. 336. See also *Lindsay v. Leathley*, 2 F. & F. 696, and *Jardine v. Leathley*, 3 F. & F. 80, as to injuries by wear and tear arising from the detention of the ship by previous sea perils.

(*m*) *Lawrence v. Aberdeen*, 5 B. & A. 107; *Gabay v. Lloyd*, 3 B. & C. 793.

extraordinary swell (*n*), or from her having stranded (*o*), or from an accidental collision (*p*).

If the loss is immediately occasioned by a peril insured against, the insurers are liable, although it arose remotely from the negligence or misconduct of the master and crew (*q*), or from a collision caused by gross negligence on the part of the crew whose ship ran into the vessel insured (*r*). But they are not liable in respect of a loss not arising from the perils insured against, but from the vice of the subject of insurance; as where a ship is sent to sea in a state not fit for the particular voyage, so that without encountering any more than ordinary risk, she is obliged to put into a port for repair (*s*); nor are they liable when the misconduct of the assured is the *efficient* cause of the loss, although the immediate cause of it be a peril insured against; for the maxim, "*in jure non remota causa sed proxima spectatur*," can never be applied where it contravenes the fundamental rule of insurance law that the insurers are not liable for a loss occasioned by the wrongful act of the assured (*t*). The underwriters are not liable, under the words in question, for injuries caused by rats (*u*), or worms (*x*). The mere remoteness, however, of the cause, if there be no other independent cause intervening, will not prevent its being considered as the cause to which the loss is to be attributed. Thus, where a vessel laden with hides and tobacco, shipped water which rendered the hides putrid, and the gas which escaped from them injured the tobacco, it was held that the damage was one which resulted, although not immediately, from the perils of the sea (*y*). And where the

(*n*) *Fletcher v. Inglis*, 2 B. & A. 315. This case is said, in *Magnus v. Buttemer*, 11 C. B. 876, to have been decided on the principle that the occurrence was accidental.

(*o*) *Hahn v. Corbett*, 2 Bing. 205.

(*p*) *Buller v. Fisher*, 3 Esp. 67.

(*q*) *Walker v. Maitland*, 5 B. & A. 171; *Bishop v. Penland*, 7 B. & C. 219; see also *Heyman v. Parish*, 2 Camp. 149; *Sadler v. Dixon*, 5 M. & W. 405; *S. C.* in Cam. Scacc., 8 M. & W. 895; *The General Marine Insurance v. Sherwood*, 14 Howard (Amer.) 352.

(*r*) *Smith v. Scott*, 4 Taunt. 120.

(*s*) *Fawcus v. Sarisfield*, 6 E. & B. 192, and see *Paterson v. Harris*, 1 B. & S. 336.

(*t*) See the judgment in *Thompson v.*

Hopper, 6 E. & B. 937. In these cases the maxim cited in the text is qualified by another legal maxim, "*dolus circuitu non purgatur*." *Ib.*

(*u*) *Hunter v. Potts*, 4 Camp. 203; see also *Laveroni v. Drury*, 8 Ex. 166, and the foreign authorities there cited.

(*x*) *Rohl v. Parr*, 1 Esp. 444. In *Phillips on Ins.* c. 13, s. 8, it is observed, that if the injury to the ship by worms arose from the loss by a sea peril of the protection of the copper sheathing, the insurer might reasonably be charged. See also *Hazard v. N. E. Marine Insurance Company*, 1 Sumner (American) Rep. 218.

(*y*) *Montoya v. The London Assurance Company*, 6 Ex. 451. From this and the other cases it would seem that the true

payment of a sum insured depended upon the safe arrival at certain ports of some Chinese emigrants, and they mutinied during the voyage, seized on the ship and refused to proceed on their destination, it was held that this piratical seizure of the ship (which was a peril covered by the policy) must be deemed to be the real cause of the loss of the sum insured, although the coolies might, if they had been so minded, have returned to the ship after the seizure, and have proceeded in her on the voyage (z).

Upon the same principle it has been decided that the insurer of goods is not liable when they are sold by the master to defray the expenses of repairs rendered necessary by a tempest; for although the same sea peril occasioned the damage for the reparation of which the goods were sold, the want of funds *aliunde*, obliged the captain to have recourse to the sale of the goods (a). Where a ship insured came into collision with another vessel, and an arbitrator awarded that each ship should bear half of the aggregate loss, and by reason of this decision the ship insured had to pay a balance to the other ship, this loss was held not to be covered by the policy (b). It was also held in the same case, that the underwriters were not liable for the wages and provisions of the crew whilst the ship was detained in port in order to repair other damage done to her by perils of the sea (c).

Where goods were insured with a warranty "free from all consequences of hostilities," and the vessel in which they were shipped went ashore partly in consequence of the extinguish-

application of the maxim "*causa proxima, &c.*," to the law of insurance, is this, —where there are two really independent causes moving to the loss, the last of which alone would have been sufficient to cause it, as, for instance, where there is a stranding and a consequent capture, or the like, the rule applies; where, however, there is but one *causa causans*, its mere remoteness, or the fact that its effect is increased or accelerated by other causes having no independent operation, does not make it a *causa remota* within the meaning of the rule. See also the judgments in *Thompson v. Hopper*, 6 E. & B. 937; and in *Ionides v. The Universal Marine Insurance Company*, 14 C. B., N. S. 259.

(1) *Naylor v. Palmer*, 8 Ex. 739; S. C., Cam. Scacc., 10 Ex. 352.

(a) *Powell v. Gudgeon*, 5 M. & S. 431;

Sarqay v. Hobson, 4 Bing. 181; see also *Benson v. Duncan*, 6 Ex. 644.

(b) *De Vaux v. Salvador*, 4 A. & E. 420; *General Marine Insurance Company v. Sierwood*, 14 Howard (American) 352. A clause is now frequently inserted in policies, by which the underwriter undertakes to be liable for damages which the vessel insured has become liable to pay by reason of a collision. This is known as the running-down clause. See *Thompson v. Reynolds*, 7 E. & B. 172. This clause does not extend to damages paid by the assured in respect of bodily injury done to persons on board the ship run down. *Taylor v. Dewar*, 12 W. R. 579. See, however, *Coe v. Smith*, 22 Ct. of Sess. Cases (Scotch), 955, *contra*.

(c) *De Vaux v. Salvador*, 4 A. & E. 420.

ment of a coast light by the Confederate authorities in America, which had been done with the object of injuring the Federal shipping, it was held that the proximate cause of the loss was a peril of the sea, and therefore did not fall within the exception (d).

Losses which do not fall within the words "perils of the seas," are often covered by the general terms which follow these words in the ordinary policies; namely, "all other perils, losses, and misfortunes," &c. (e). The underwriters are not liable under the ordinary policies for losses occurring *on shore* to goods landed for trading purposes (f).

**Presumptions
as to loss.**

In the absence of any express stipulation in the policy, a vessel which is not heard of for a reasonable time is presumed to have perished by a peril of the sea (g). What is such a reasonable time as to give rise to this presumption depends, not upon any fixed rule of law, but upon the circumstances of each particular case (h). The Courts will not act on mere rumours; it must be shown that no intelligence has been received from persons capable of giving an authentic account. Proof that a few days after the ship's sailing a report was heard at the place whence she sailed that she had foundered, but that the crew were saved, was held, however, to be sufficient *prima facie* evidence of a loss by perils of the sea; although the assured did not call any of the crew, or show that he was unable to procure their attendance (i). And where evidence was given that an outward bound vessel had not been heard of in this country for nearly two years after she had sailed, it was held that the jury might presume her loss, and that the plaintiff need not call witnesses from her port of destination to prove that she had never arrived there (j). In all these cases, however, the assured must prove that when the vessel left port she was bound upon the voyage insured (k).

(d) *Ionides v. The Universal Marine Insurance Company*, 14 C. B., N. S. 259. In this case some of the cargo might have been saved, but for the interference of the Confederate troops. This portion was held to be within the warranty.

(e) *Ante*, p. 335. *Cullen v. Butler*, 5 M. & S. 461; *Phillips v. Barber*, 5 B. & A. 161. But the losses were in these cases *ejusdem generis* as those insured against. See 2 Wms. Saund. 202 a, note (14).

(f) *Harrison v. Ellis*, 7 E. & B. 465.

(g) *Green v. Brown*, 2 Str. 1199; *Newby v. Read*, 1 Park on Ins. 106.

(h) *Houtman v. Thornton*, Holt, 242. By the French law, the assured may, in the case of ordinary voyages, abandon if he receives no news of the ship for a year after her sailing, or for any one entire year. In long voyages the period fixed is two years. Code de Comm. Art. 375. See as to the distinction between ordinary and long voyages, *ib.* Art. 377.

(i) *Koster v. Reed*, 6 B. & C. 19.

(j) *Tweslow v. Owin*, 2 Camp. 85.

(k) *Cohen v. Hinckley*, 2 Camp. 51. *Marshall v. Parker*, *ib.* 69; *Koster v. Innes*, R. & Moo. 333.

If, after the underwriters have paid as upon a lost ship, she reappears, she will be treated as abandoned, and as belonging to them (*l*).

The insurers are liable for a loss by fire, whether it be occasioned by the act of God, as by lightning or other unavoidable accident, or by the negligence of the master or mariners (*m*). They are also liable if the vessel be burnt in the discharge of a duty to the state; as where a ship chased by a privateer was burnt by the master, in order to prevent her falling into the hands of the enemy (*n*).

In a case at Nisi Prius, it was ruled by Lord Ellenborough that if goods are destroyed by a fire arising from their having been shipped in such a state as to generate heat and ignite spontaneously, the assured cannot recover; as the loss is in this case the consequence of his own improper act (*o*).

A loss by enemies occurs when the vessel is captured, or injured *jure belli*; that is, by the subjects of a country at war with that to which the ship insured belongs (*p*); and an actual capture made by a lawful authority, although at a time when war had not been declared against the country to which the ship belonged, and therefore one that could not be sustained, has been held to be within a warranty against "capture and seizure" contained in a policy of insurance (*q*). But a seizure by a foreign government for contravention of revenue laws, does not fall within the word "capture" (*r*). The assured on goods may recover for a loss by capture, although it was effected through a barratrous agreement made by the master of the ship, to which the assured was no party (*s*). An insurance in this

(*l*) *Houtman v. Thornton*, Holt, 242.

(*m*) *Busk v. The Royal Exchange Assurance Company*, 2 B. & A. 73.

(*n*) *Gordon v. Rimmington*, 1 Camp. 123. An insurance on the ship, body, tackle, &c., with liberty to stay at any ports or places, was held to cover a loss where the sails, tackle, &c., of a ship were consumed by an accidental fire while they were in a warehouse upon a sand bank in the Canton River, where they had been placed in accordance with the usage of the voyage. This was held to be a loss by fire during the voyage. *Pelly v. The Royal Exchange Assurance Company*, 1 Burr. 341. But under the

ordinary policy the underwriters are not liable for a loss by fire occurring on shore to a portion of the cargo which has been landed. *Harrison v. Ellis*, 7 E. & B. 465.

(*o*) *Boyd v. Dubois*, 3 Camp. 133; see also *Austin v. Drewe*, 6 Taunt. 436.

(*p*) See 1 Park on Ins. 108. See also *post*, p. 385, the cases decided upon the warranty of freedom from seizure or capture.

(*q*) *Powell v. Hyde*, 5 E. & B. 607.

(*r*) *Matthis v. Potts*, 3 B. & P. 23.

(*s*) *Arcangelo v. Thompson*, 2 Camp. 620.

country against British capture is, as we have seen, void (*t*). In accordance with the rule that the proximate cause is that to which a loss is to be attributed, it has been held that where a ship was driven by stress of weather on an enemy's coast, and was consequently captured, the loss was a loss by capture, and not by the perils of the sea (*u*).

Although the title to a ship by capture is not complete until condemnation (*v*), the right of the assured to recover under the policy for a capture does not depend upon that step being taken, but accrues as soon as he has sustained an actual loss (*x*). Where the captain, after capture and re-capture, acting with *bona fides*, sold the ship and cargo, it was held that the assured might recover as for a total loss (*y*). And a total loss by abandonment, made upon sufficient ground after capture, will not be converted into an average loss by a return of the vessel under conditions which make it uncertain whether the assured may not have to pay more than her worth (*z*). The underwriters cannot, however, be made liable for more than the actual loss (*a*); if, therefore, before the abandonment there has been a re-capture, so as to fix the loss at that time as an average only, the assured cannot recover as for a total loss (*b*), although, when he gave notice of the abandonment, he had received intelligence of the capture, but not of the re-capture (*c*). So, where the notice of abandonment was not assented to by the underwriter,

(*t*) *Ante*, p. 332.

(*u*) *Green v. Emslie*, Peake, 278, 3rd edit.

(*v*) *Ante*, p. 41.

(*x*) See the judgment of Lord Mansfield in *Goss v. Withers*, 2 Burr. 694; see also *Hamilton v. Mendes*, *ib.* 1198, and *Pond v. King*, 1 Wils. 191.

(*y*) *Miles v. Fletcher*, 1 Doug. 231. On the continuance of an embargo the owner may abandon. *Rotch v. Edie*, 6 T. R. 413.

(*z*) *McIvor v. Henderson*, 4 M. & S. 576; see also *Cologan v. The London Assurance Company*, 5 M. & S. 447. The cases establish the principle, that if once there has been a total loss by capture, this is construed to be a permanent total loss, unless something afterwards occurs by which the assured either has the possession restored, or has the means of obtaining such restoration. It is immaterial that he has the mere right to obtain it; for if that were enough to prevent a total loss, there could never be a total loss in the case of a capture by

pirates, who have never a right to the possession. See the judgment of Lord Campbell, C. J., in *Dean v. Hornby*, 3 E. & B. 180; see also *Lozano v. Janson*, 2 E. & E. 160, where there had been a wrongful seizure by a British ship of war, and it was held that the assured was entitled to recover as for a total loss at the time when the action was brought, although previously to this the Privy Council had ordered restitution of the ship, and of such part of the cargo as was unsold.

(*a*) See the judgment of Lord Mansfield in *Goss v. Withers*, 2 Burr. 694.

(*b*) *Hamilton v. Mendes*, 2 Burr. 1198.

(*c*) *Bainbridge v. Neilson*, 10 East, 329. In this case the property was actually restored before the action was brought. The owners may recover for a total loss, even after a re-capture, if up to the commencement of the action they have neither had actual possession nor the means of obtaining it. *Dean v. Hornby*, 3 E. & B. 180.

and before action brought, the ship was re-captured and arrived at her destined port, having sustained only a partial loss (*d*). A re-purchase by the owner after a capture is illegal, for it amounts to a ransom; and the owner cannot recover from the insurers the amount which he has paid as purchase-money (*e*). They are liable, however, for payments made *bonâ fide* to compromise a suit of condemnation (*f*).

The next protection is against "pirates, rovers, and thieves." We have already said that pirates are considered as "*hostes humani generis*," and therefore are never recognized as enemies (*g*); nor are they included in the expression "kings, princes, and people;" for the latter word is to be construed according to the maxim "*noscitur a sociis*" (*h*). Pirates, rovers, and thieves.

Jettison occurs where goods are thrown overboard for the preservation of the ship and cargo, or for any other sufficient cause (*i*); as, for instance, to prevent her capture by an enemy (*j*). In this case the loss is covered on the same principle on which the destruction of the vessel herself is protected, where she is burnt to prevent her falling into the hands of an enemy (*k*). In a recent case it was held that a custom that underwriters are not liable for general average in respect of the jettison of deck cargo is valid, and does not contradict the terms of the policy (*l*). Jettisons.

The words "arrests, restraints, and detainments of all kings, princes, and people," are properly applicable only to the ruling power of a country, and not to pirates or any other lawless power (*m*); they apply, however, not only to hostile acts, but also to those which are committed by the government of which the assured is a subject; as, for instance, to the seizure of the vessel by the owners' government for the purpose of using her Arrests, restraints, &c.

(*d*) *Patterson v. Ritchie*, 4 M. & S. 393; see also *McMasters v. Shoolbred*, 1 Esp. 237.

(*e*) *Havelock v. Rockwood*, 8 T. R. 268.

(*f*) *Berens v. Rucker*, 1 W. Bl. 313.

(*g*) See *ante*, pp. 40 and 259; see also *Molloy*, B. 1, c. 4; 1 *Beawes Lex Merc.* 351, and *Dean v. Hornby*, 3 E. & B. 180.

(*h*) *Nesbitt v. Lushington*, 4 T. R. 783.

(*i*) See *ante*, p. 320.

M. P.

(*j*) *Butler v. Wildman*, 3 B. & A. 399.

It was not necessary, however, in that case to decide the point, since, if the loss did not fall within the meaning of the word "jettisons" in the policy, it was covered by the general words "all other losses and misfortunes," which were also used in it.

(*k*) See *ante*, p. 367.

(*l*) *Miller v. Tetherington*, 6 H. & N. 278; *S. C.*, *Cam. Scacc.*, 7 H. & N. 954.

(*m*) *Nesbitt v. Lushington*, *ubi supra*.

as a fire-ship (n); and to the wrongful seizure of an English ship and cargo by a British ship of war (o).

An insurance in this country by a foreigner against a British embargo would probably be held to be void upon the same principle as an insurance against British capture (p).

It was at one time considered that a foreigner could not insure in this country against the acts of his own government, on the ground that he himself was to be considered as a party to them (q); but later cases have shown that this is only an implied exclusion from the reason and fitness of the thing; and that if a particular commerce is known to the underwriters to be carried on, notwithstanding its prohibition by the foreign state, they are liable to a foreign assured on the policy (r). And in a recent case, the rule that the act of the government of a country is to be treated for this purpose as the act of each subject of it was denied, and it was held that this rule, even if correct, could not be applied to the case of an embargo laid on in a time of peace between the countries of the insurer and assured, for a purpose wholly unconnected with hostility either existing or expected (s). Such a risk, however, is not protected if the nationality of the assured is not communicated to the underwriter; for the former might not only omit to take proper means for preventing the loss, but might facilitate it by giving information to his own government, a possibility which materially varies the risk (t).

The detention must be the immediate cause of loss; if, therefore, there is an embargo at the port of destination which compels the master to avoid it, and the object of the voyage is

(n) *Green v. Young*, 2 Lord Raym. 340.

(o) *Losano v. Janson*, 2 E. & E. 160.

(p) *Ante*, p. 332; and see the judgment of Lord Alvanley in *Touteng v. Hubbard*, 3 B. & P. 298. In *Mullett v. Shedden*, 13 East, 304, this point does not appear to have been discussed.

(q) *Conway v. Gray*, 10 East, 536; *Menett v. Bonham*, 15 East, 477; *Flindt v. Scott*, *ib.* 525. *Conway v. Gray* was disapproved of in the Exchequer Chamber in *Aubert v. Gray*, 3 B. & S. 163, 169.

(r) *Simeon v. Bazett*, 2 M. & S. 94; *S. C.* in error, *nomine Bazett v. Meyer*, 5 Taunt. 824; see also *Flindt v. Scott*, in error, *ib.* 674, where it was held that

a foreigner who engages, under a licence from this country, in a trade prohibited by the law of his own country, separates himself from the acts of his own government. In America it has been held that there is no objection to insurances on this ground. 3 Kent Comm. 292.

(s) *Aubert v. Gray*, 3 B. & S. 163; *S. C.* in Cam. Scacc., *ib.* 169. The Court of Exchequer Chamber expressly abstained from saying that if the act of seizure had been a lawful act under the municipal law of the country to which the assured belonged, it would, as against him, have been covered by the insurance.

(t) *Campbell v. Innes*, 4 B. & A. 423.

thereby defeated, the assured is not protected (*u*); nor can the policy be extended so as to cover a deviation rendered necessary by an embargo, or the like (*v*). Where, however, a vessel chartered to a port in America was insured on her voyage out and home, and on arrival at her port of destination she found that it was under an embargo, but she was permitted either to return with the cargo on board, or to discharge her cargo and return in ballast, upon which the master discharged the cargo, and, after waiting eighteen months until the embargo ceased, returned with a homeward cargo, it was held that the underwriters were liable for a loss on the home voyage (*w*).

We have already seen what constitutes barratry (*x*). Losses **Barratry.** arising from barratry need not follow immediately upon the act of barratry; the underwriter is not, however, liable if the loss does not occur until after the expiration of the risk described by the policy, although the act of barratry have been committed during the continuance of the risk. Thus, where a ship was insured for a voyage, and after she had been in port twenty-four hours was seized, in consequence of an act of smuggling committed by the master during the voyage, this was held not to be a loss within the policy (*y*).

Eighthly, as to *the memorandum*. In order to prevent the underwriters from being liable for injury to goods of a peculiarly perishable nature, and for minor damages, the *memorandum* is inserted (*z*). **THE MEMORANDUM.**

The terms of this part of the policy are as follows:—

N.B.—(1) Corn, fish, salt, fruit, flour, and seed, are warranted free from average, unless general or the ship be stranded;

(*u*) *Hadkinson v. Robinson*, 3 B. & P. 388; *Lubbock v. Rowcroft*, 5 Esp. 50; *Forster v. Christie*, 11 East, 205. As to what captures are covered by a warranty against the ship's seizure in her port of discharge, see *Dalglish v. Brooks*, 15 East, 295; *Keyser v. Scott*, 4 Taunt. 660. Where goods are landed in the usual manner, and then seized, they are not protected, even although they have not reached the possession of the consignee. See *Brown v. Carstairs*, 3 Camp. 161. The cases in which the seizure has arisen from the breach of a warranty will be found *post*, p. 385.

(*v*) *Parkin v. Turno*, 2 Camp. 59; *S. C.* 11 East, 22; *Blackenhagen v. The London Assurance Company*, 1 Camp. 454.

(*w*) *Schroder v. Thompson*, 7 Taunt. 462.

(*x*) *Ante*, p. 105.

(*y*) *Lockyer v. Offley*, 1 T. R. 252.

(*z*) It was first introduced in 1749. Observations upon the clause "franc d'avarie," contained in French policies, will be found in Emerigon, *Traité des Assurances*, c. xii. s. 45, where the usages of several countries upon this head are mentioned. See also Benecké, *Princ. of Indemn.* p. 487.

(2) sugar, tobacco, hemp, flax, hides and skins are warranted free from average under five per cent. ; (3) and all other goods, also the ship and freight, are warranted free from average under three pounds per cent., unless general or the ship be stranded.

Average within its meaning.

The word *average* is not used in the memorandum in the sense spoken of in a former Chapter. It does not mean here a general loss to which all must contribute, but a *partial damage to particular goods*.

The meaning of this obscure memorandum is this: on the articles mentioned in paragraph (1) the underwriters are not to be liable for any partial damage, unless the loss is in the nature of a general average, *or* the ship is stranded; on the articles mentioned in paragraph (2) they are not to be liable for any damage (except loss in the nature of a general average) unless it equals or exceeds five per cent. of their value, *or* the ship is stranded; and on the ship, freight, and all other goods they are not to be liable for any damage (except loss in the nature of a general average), unless it equals or exceeds three per cent. of the value, *or* the ship is stranded (*a*).

It has been held that the word corn in the memorandum includes malt (*b*), and also peas, and beans (*c*), but not rice (*d*).

As in other cases, a loss is, for these purposes, total, if the effect of the damage is such that the goods are lost to the assured (*e*). Thus, where a cargo of fruit was so damaged by sea water that the authorities refused to allow it to be landed at a port to which the ship was driven, and it was there thrown overboard, it was held that the underwriter was liable (*f*). Where the cargo, although damaged, arrives at its destination, the underwriter is protected by the exception (*g*). And if the vessel is wrecked short of its destination, and the cargo is got ashore in a damaged condition *in specie*, but not being of a

(a) See 1 Arnould on Ins. 33 (2nd edit.).

(b) *Moody v. Surridge*, 2 Esp. 633.

(c) *Mason v. Skurray*, 1 Park on Ins. 174.

(d) *Scott v. Bourdillon*, 2 N. R. 213.

(e) See *Roux v. Salvador*, 3 B. N. C. 266, and the cases cited *post*, Chap. VII., Part II., CONSTRUCTIVE TOTAL LOSS. Whether a loss is total or partial depends upon general principles, which apply equally to the articles which are

within the memorandum, and to those which are covered by the policy generally. See the judgment in *Roux v. Salvador*, *ubi supra*.

(f) *Dyson v. Rowcroft*, 3 B. & P. 474; *Cocking v. Fraser*, 1 Park on Ins. 181; *Colegan v. The London Assurance Company*, 5 M. & S. 447; *Parry v. Aberdeen*, 9 B. & C. 411.

(g) *Mason v. Skurray*, 1 Park on Ins. 191; *Anderson v. The Royal Exchange Assurance Company*, 7 East, 38.

perishable nature, it might have been conveyed to the port to which it is consigned without any loss of its specific character, the underwriter is protected (*h*).

But if goods of a perishable nature are damaged by the sea, and necessarily landed before the termination of the voyage, and it is found that they cannot be brought to their destination without losing their original character, owing to their being unable to bear the further voyage in their damaged condition, the circumstance of their existing *in specie* at that forced termination of the risk does not prevent the assured from recovering, although the goods are sold in their original character (*i*). Where goods are sold under such circumstances the question is, not whether a prudent person uninsured would have sold them, but whether the goods are in such a state that, if brought home, they could be sold for an amount exceeding the expense of unshipping, drying, or warehousing, and transshipping and salvage. If this is not so, the loss is total (*j*).

Where in the memorandum the words "warranted free from particular average" are used, these words are not confined to losses arising from injury to the goods themselves, but amount to a warranty against any loss other than a total loss, or general average; and therefore the underwriters are not liable for expenses incurred in relation to the goods, such as freight paid for the forwarding of them to their destination (*k*).

It was formerly considered that the cases had established that, whether a loss was a total loss of part, or an average loss of the whole of the cargo, depended upon the mode in which the cargo was stowed, and that if it was carried in casks or packages

(*h*) *Thompson v. The Royal Exchange Assurance Company*, 16 East, 214; *Glennie v. The London Assurance Company*, 2 M. & S. 371; *Hedburg v. Pearson*, 7 Taunt. 154.

(*i*) *Roux v. Salvador*, 3 B. N. C. 266, reversing *Roux v. Salvador*, 1 B. N. C. 526; *Nasone v. Haddon*, 9 C. B. 30.

(*j*) *Rosette v. Gurney*, 11 C. B. 176; *Reimer v. Ringross*, 6 Ex. 263; see also *post*, p. 408.

(*k*) *The Great Indian Peninsula Railway Company v. Saunders*, 1 B. & S. 41; *S. C.* in Cam. Scacc., 2 B. & S. 266. In this case iron rails were shipped to a foreign port, freight to be paid here, ship lost or not lost. The shippers insured them by a policy in the ordinary

form, "warranted free from particular average, unless the ship be stranded, sunk or burnt," with the usual clause authorizing the assured to "sue, labour and travel for, in and about the defence, safeguard and recovery of the goods." The ship was neither stranded, sunk nor burnt, but there was a constructive total loss of her by perils of the sea. The rails were saved, and sent on in other vessels to their destination, for which the assured was compelled to pay freight to an amount not exceeding the value of the rails. It was held that this freight was not recoverable under the policy. See also *Booth v. Gair*, 15 C. B., N. S. 291.

which were capable of separate valuation, a loss of one was a total loss to that extent (*l*), but that if the cargo was stowed in bulk (*m*), or a portion only of each cask or the like was damaged (*n*), this was to be considered an average loss. This important question was, however, discussed before the Exchequer Chamber in a modern case, and that Court, after reviewing the earlier decisions, and explaining that their effect had been to a great extent misapprehended, held that where memorandum goods of the same species are shipped, whether in bulk or in packages not expressed by distinct valuation or otherwise in the policy to be separately insured, and there is no general average, and no stranding, the ordinary memorandum exempts the underwriters from liability for a total loss or destruction of part only, although consisting of one or more entire package or packages, and although such package or packages be entirely destroyed or otherwise lost by the specified perils (*o*).

Where, however, "master's effects" were insured "free from all average," and some of the articles were wholly lost, but others were saved, it was held that the master might recover for those which were lost, since the word "effects" was used merely to save the enumeration in the policy of the articles insured, and it was therefore intended that the insurer should be liable for any total loss of the specific things referred to by this general word (*p*). So, where the insurance was for "240*l*., on goods so valued against total loss only," and the assured put on board goods of different kinds and descriptions, and in separate cases and packages, and all the goods were lost except three of the packages, it was held that he might recover in respect of the packages which were totally lost (*q*). Where the policy was "on rice to be declared warranted free of particular average," it was held that the assured could not, by indorsing on the policy a declaration of interest, with a separate valuation of each bag of rice, create a separate insurance on each bag (*r*).

(*l*) See the judgment of Lord Mansfield in *Lewis v. Rucker*, 2 Burr. 1170; and *Dow v. Milford*, 15 East, 559.

(*m*) *Hills v. The London Assurance Company*, 5 M. & W. 569.

(*n*) *Hedburg v. Pearson*, 7 Taunt. 154.

(*o*) *Ralli v. Janson*, 6 E. & B. 423. See the judgment of the Court in which the authorities, both English and foreign, are fully collected and com-

mented on. The Court expressed no opinion as to the liability of the underwriters in these cases, in respect of goods of different species.

(*p*) *Duff v. Mackenzie*, 2 C. B., N. S. 16.

(*q*) *Wilkinson v. Hyde*, 2 C. B., N. S. 30.

(*r*) *Entwistle v. Ellis*, 2 H. & N. 549.

Where a policy contained, in addition to the usual memorandum, a clause binding the underwriter to pay average separately upon each package, this was held not to prevent the assured, in the event of some packages only being injured, from selling the whole and recovering for an average loss upon the whole exceeding three per cent. (s).

Under the words "are warranted free from average under three per cent.," the underwriter is liable if it appears at the end of the voyage that the aggregate amount of several partial losses equals or exceeds three per cent., although each taken separately is under that amount (t). The proportion which the average bears to the cargo must be calculated with reference to the state of the cargo at the time at which the loss happens (u).

By the warranty of goods free from average, unless "the ship be stranded," the underwriters agree to ascribe the loss to the stranding, as being the most probable occasion of it, although the fact cannot always be ascertained (x). Accordingly, where a stranding has taken place, an average loss becomes a charge upon the underwriters, whether it has been in reality occasioned by the stranding or not (y), provided the stranding took place while the goods were on board. Where it does not occur until after they are landed the liability of the underwriter is not affected, although the landing took place at an intermediate port, and in consequence of the goods being damaged (z).

To constitute a stranding a striking is not sufficient. If the ship merely touches or strikes and gets off again, how much soever she may be injured, she is not stranded; but if she settles and remains for any time, this is a stranding, without reference to the degree of damage which she sustains (a). A resting for

(s) *Hagedorn v. Whitmore*, 1 Stark. 157. As to the effect of a separate valuation of the hull and machinery of a steamer where average expenses are incurred for the benefit of the whole adventure, see *Oppenheim v. Fry*, 11 W. R. 725.

(t) *Blackett v. The Royal Exchange Assurance Company*, 2 C. & J. 244.

(u) *Rohl v. Parr*, 1 Esp. 446.

(z) See *per* Lord Kenyon in *Nesbitt v. Lushington*, 4 T. R. 787.

(y) See *per* Lord Tenterden in *Wells v. Hopwood*, 3 B. & Ad. 35; see also *Wilson v. Smith*, 3 Burr. 1550; *Burnett*

v. Kensington, 7 T. R. 210; *Harman v. Vaux*, 3 Camp. 429.

(x) *Roux v. Salvador*, 1 B. N. C. 526, overruled, but not on this point, 3 B. N. C. 286.

(a) *Harman v. Vaux*, *ubi supra*; *Macdougale v. The Royal Exchange Assurance Company*, 1 Stark. 180, in which Lord Ellenborough said, "A striking is not sufficient; it is merely temporary, or as it has been vulgarly described, a touch and go; but in order to constitute a stranding, the ship must be stationary." See *S. C.* 4 M. & S. 503.

fifteen or twenty minutes has been held to be a stranding (*b*). It is immaterial whether it be upon a bank or a rock (*c*). It is not, however, every stationary taking ground that constitutes a stranding. Thus, where a vessel takes the ground in the ordinary and usual course of navigation and management in a tidal river or harbour, upon the ebbing of the tide, or from a natural deficiency of water, so that she may float again upon the flow of the tide or increase of the water, this is not a stranding within the meaning of the memorandum (*d*). But it is otherwise where the ground is taken under any extraordinary circumstances of time or place, by reason of some unusual or accidental occurrence (*e*). Thus, when a vessel took the ground several times in going up a harbour in the ordinary course of navigation from the shallowness of the water, this was held to be no stranding (*f*). So, where a vessel took the ground in a tidal harbour where it was intended that she should do so, at the time she was moored, and was injured by striking against some hard substance, this was also considered not to be a stranding (*g*). But where a ship was improperly fastened to a pier in a basin, so that she took the ground, and when the tide left her she fell over and was bilged, this was held to be stranding (*h*). So, where the water being drawn off from an inland navigation for the purpose of repairing it, a vessel settled accidentally upon some piles which were not previously known to be there (*i*), where a vessel, having struck upon an anchor in a harbour, was injured and in danger of sinking, and was thereupon hauled higher up the harbour and drawn upon the ground, where she remained for some time (*k*), and where a ship under stress of weather made a tidal harbour, but it being low water she grounded there (*l*), these were all held to be cases of stranding.

(*b*) *Baker v. Towry*, 1 Stark. 436.

(*c*) *Ib.*

(*d*) *Magnus v. Buttner*, 11 C. B. 867; 3 Kent Comm. 323, note (*c*). See also the judgment in *Corcoran v. Gurney*, 1 E. & B. 456.

(*e*) See the judgment of Lord Tenterden in *Wells v. Hopwood*, 3 B. & Ad. 35.

(*f*) *Hearne v. Edmunds*, 1 B. & B. 388.

(*g*) *Kingsford v. Marshall*, 8 Bing. 458.

(*h*) *Carruthers v. Sydebotham*, 4 M. & S. 77; see also *Bishop v. Pentland*, 7 B. & C. 219.

(*i*) *Rayner v. Godmond*, 5 B. & A. 225.

(*k*) *Barrow v. Bell*, 4 B. & C. 736.

(*l*) *Corcoran v. Gurney*, *ubi supra*.

CHAPTER VII.

INSURANCE.

PART II.

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THE term *Warranty*, as used in insurance law, means any asser-
tion or undertaking on the part of the assured, whether ex-
pressed in the contract, or capable of being annexed to it, on
the strict and literal truth or performance of which the liability
of the underwriter is made to depend. Warranties may be
either express or implied; they are express if stated in terms in
the contract, and implied if superadded to it by custom and

WARRANTIES
EXPRESS AND
IMPLIED.

What is a
warranty.

known usage. In either case, and whether they are material or not to the risk (*a*), the strict performance of them is a condition precedent to the attaching of the underwriter's liability (*b*); even although the loss arise from a cause wholly unconnected with the breach of warranty (*c*), and the non-compliance with it occasion no damage (*d*). Nor will a compliance with a warranty be excused by the occurrence of events over which the assured has no control (*e*). And where the warranty is of a matter which continues of importance until the risk determines, as, for instance, a warranty of neutrality, such a warranty is continuous so far as relates to the acts of the assured, whether the policy be for a voyage or for a time certain (*f*).

The subject of *Representations* will be considered in a later part of this Chapter (*g*). They may be defined to be statements or assertions made at the time of entering into the contract, but not embodied in it, or if embodied in it, not intended to be of its essence. They differ from warranties inasmuch as they are collateral to the contract, and a substantial compliance with them is sufficient.

An express warranty must appear on the face of the policy. The contents of a separate paper, even although it is wrapt up with the policy, or pinned or wafered to it, have been held not to be a warranty, but merely a representation (*h*). If, however, the separate paper is referred to in the policy, so as to be incorporated with it, it is otherwise; as where the policy is declared to be made subject to the rules of a company or club (*i*); and a statement in the margin of the policy (*k*), or at the bottom of it (*l*), may be a warranty.

The most usual express warranties in time of peace are, that the ship is safe on a given day, and that she will sail or depart on a given day. In time of war it is also usual to warrant that

(*a*) See the judgment of Lord Eldon in *The Newcastle Fire Insurance Company v. Macmorran*, 3 Dow. 262.

(*b*) *Pawson v. Watson*, 2 Cowp. 785; *De Hahn v. Hartley*, 1 T. R. 343; 2 T. R. 186.

(*c*) *Woolmer v. Muilman*, 3 Burr. 1419.

(*d*) *Rich v. Parker*, 2 Esp. 615; 7 T. R. 705.

(*e*) *Hore v. Whitmore*, 2 Cowp. 84.

(*f*) See the judgment in *Sillem v. Thornton*, 3 E. & B. 883.

(*g*) *Post*, p. 392.

(*h*) *Pawson v. Ewer*, 1 Doug. 12, note;

Pawson v. Barnevelt, *ib.*; *Bize v. Fletcher*, 1 Doug. 13, note.

(*i*) *Pittagrew v. Pringle*, 3 B. & Ad. 514; *Graham v. Barras*, 5 B. & Ad. 1011; *Colledge v. Harty*, 6 Ex. 205. This rule was first acted on in cases of fire policies. See *Routledge v. Burrell*, 1 H. Bl. 254; *Worsley v. Wood*, 6 T. R. 710.

(*k*) *Bean v. Stupart*, 1 Doug. 11; *De Hahn v. Hartley*, *ubi supra*.

(*l*) *Blackhurst v. Cockell*, 3 T. R. 360.

the ship will sail with convoy, and that she and her cargo are neutral property and free from confiscation or seizure in the port of discharge. We will consider these warranties in the above order.

A warranty that the ship or goods are safe on a particular day is complied with if they are safe at any time on that day, although they were lost at the time when the underwriter subscribed the policy (*m*). Where a ship was insured at and from one port to another, a warranty that she was "in port" on a certain day was held to mean that she was safe in the port from which the voyage insured was to commence, and not to be satisfied by her being at that time safe in another port (*n*). Express warranty of safety on a given day.

A warranty to sail on a particular day, means that the ship shall be on her voyage on that day, and is, therefore, not fulfilled unless she completely unmoor on that day; although she may have her cargo and passengers on board and be ready to sail, and is only prevented by stress of weather (*o*); nor will the raising anchor and getting under sail suffice, unless at the time of her doing so she has everything ready to perform the voyage, so as to make those acts the actual commencement of it (*p*). If, therefore, she has not taken on board the whole of her ballast (*q*), or her full crew (*r*), or if, although she has left the harbour, the captain has gone on shore to complete the ship's papers (*s*), the warranty is not complied with. Upon an insurance at and from Portneuf to London, to sail on or before the 28th October, it was held that the dropping down the river before that day, with a crew only sufficient for the river navigation to Quebec, where she was to get her clearances, was not a compliance with the warranty (*t*). It does not in such cases To sail on a given day.

(*m*) *Blackhurst v. Cockell*, 3 T. R. 360.

(*n*) *Colby v. Hunter*, Moo. & Malk. 81.

(*o*) *Nelson v. Salvador*, Moo. & Malk. 309. See as to the construction put on the words "final sailing from the port of loading" in a charter-party, *Roelandts v. Harrison*, 9 Ex. 444; as to the words "leave Amsterdam," *Van Baggen v. Baines*, *ib.* 523; and as to the words "the ship shall be dispatched within twenty-one days after arrival," *Sharp v. Gibbs*, 1 H. & N. 801. See also *Baines v.*

Holland, 10 Ex. 802.

(*p*) See the judgment of Abbott, C. J., in *Lang v. Anderdon*, 3 B. & C. 495; and *Bond v. Nutt*, 2 Cowp. 601.

(*q*) *Pittagrew v. Pringle*, 3 B. & Ad. 514.

(*r*) *Graham v. Barras*, 5 B. & Ad. 1011.

(*s*) *Thompson v. Gillespy*, 5 E. & B. 209; *Hudson v. Bilton*, 6 E. & B. 565.

(*t*) *Ridsdale v. Newnham*, 4 Camp. 111; 3 M. & S. 456; see also *Nelson v. Salvador*, *ubi supra*. The rule laid down in these cases does not apply where a

form any excuse for the non-fulfilment of the warranty that the vessel was prevented from leaving port by an embargo (*u*). If, however, a vessel, perfectly ready to proceed with her voyage, quits her moorings, but after sailing a short distance is detained by a subsequent occurrence, the warranty is complied with (*x*). Where a ship insured "at and from Jamaica," left her port of lading before the day on which she was warranted to have sailed, with all her cargo and clearances on board, and proceeded, in order to join convoy, to the usual place of *rendezvous* at another port of the island, where she was detained by an embargo, it was held that the warranty was complied with (*y*). So, where a ship sailed from Demerara on the day warranted, and when beyond the mouth of the river, the tide being low, she anchored for two days within a shoal which extended for some miles beyond the mouth of the river, it was held that the warranty had been observed (*z*). In such cases the vessel must sail with the *bonâ fide* intention of proceeding with the voyage, and not merely for the purpose of satisfying the warranty. A vessel in Dublin harbour, warranted not to sail after the 15th August, was on that day cleared and taken out of dock, and warped down the river as far as possible. The following day she was warped further down, but could not proceed to sea, owing to the state of the wind, until the 17th. The Court held, that if what was done had been done *merely* for the purpose of complying with the warranty, the warranty was not satisfied; but that it was otherwise if the master had acted with the *bonâ fide* intention of placing the ship in a more favourable position with regard to the prosecution of her voyage, or if he had acted partly with that intention, and partly in order to comply with the warranty (*a*).

If a vessel be insured "at and from" several ports to sail on

voyage is divisible into two distinct parts, requiring a different kind of seaworthiness. Thus where ships were insured from Lyons to Galatz, to sail on or before a particular day, and they sailed before that day from Lyons, in a state fit for the river navigation down to Marseilles, but from the nature of the navigation they could not be made fit for sea till they arrived at Marseilles, it was held that the warranty had been complied with. *Bouillon v. Lupton*, 15 C. B., N. S. 113.

(*u*) *Hore v. Whitmore*, 2 Cowp. 784.

(*z*) See the judgment of Lord Tenterden in *Pittegrew v. Pringle*, 3 B. & Ad. 514.

(*y*) *Bond v. Nutt*, 2 Cowp. 601; see also *Earle v. Harris*, 1 Doug. 357; *Thellusson v. Fergusson*, *ib.* 361.

(*x*) *Lang v. Anderdon*, 3 B. & C. 495.

(*a*) *Cochrane v. Fisher*, 2 C. & M. 581. On the second trial the jury found that the master had intended to sail on the 15th, and that he had used proper exertions to do so. See 1 C., M. & R. 809.

or before a particular day, the warranty is complied with if she leaves her final port of loading before that day, although she afterwards touches at another of these ports in order to join convoy (*b*). Under an insurance "at and from" an island, to sail after a given day, the moving from port to port in that island before that day is not a violation of the warranty (*c*). Where a ship was insured "at and from New York to Quebec during her stay there, thence to the United Kingdom, the ship being warranted to sail from Quebec on or before the 1st November," and the vessel was lost on her voyage from New York to Quebec, but she had not sailed from New York at a time reasonably sufficient to have enabled her to sail from Quebec on the day mentioned, it was held that the underwriters were nevertheless liable, since the warranty could not be extended by inference to an undertaking to leave New York by any particular time (*d*).

Where the warranty, instead of being "to sail," was "to depart," it was held to be necessary that the ship should not only have broken ground on the day named, but that she should be then out of the port, or at sea (*e*).

A convoy is a naval force, consisting of a ship or ships appointed by the government, or by the commander of a particular station, to escort and protect merchant ships proceeding to certain ports. The warranty to sail with convoy is not satisfied by obtaining the protection of a single man-of-war, which is not in fact part of the convoy, and the captain of which has not obtained sailing orders (*f*). To sail with
convoy.

This warranty implies that the ship shall sail with convoy for the whole voyage (*g*); and if a convoy be appointed for the same voyage as that on which the ship insured is bound, she must sail with that convoy. If she sail with a convoy appointed for another voyage, although the course is nearly the same for a

(*b*) *Wright v. Shiffner*, 2 Camp. 247; 11 East, 515.

(*c*) *Cruickshank v. Janson*, 2 Taunt. 301.

(*d*) *Baines v. Holland*, 10 Ex. 802.

(*e*) *Moir v. The Royal Exchange Assurance Company*, 4 Camp. 84; 3 M. & S. 461; 6 Taunt. 241; and see the cases cited *ante*, p. 379, note (*o*).

(*f*) *Hibbert v. Pigou*, 2 Park on Ins. 498. The 13 Car. 2, st. 1, c. 9, and the 22 Geo. 2, c. 33, directed that com-

manders of King's ships should take care of vessels under convoy. The 38 Geo. 3, c. 76, and 43 Geo. 3, c. 57, required all British ships to sail under convoy during hostilities. See *Long v. Dutt*, 2 B. & P. 209; *Cohen v. Hinckley*, 1 Taunt. 249; *Hinckley v. Walton*, 3 Taunt. 131.

(*g*) *Lilley v. Ewer*, Dougl. 72; see also *Jefferyes v. Legendra*, Show. 297; 3 C. 3 Lev. 320; 2 Salk. 443.

great part of the way, this will not suffice (*h*). In practice the government usually appoints a place of *rendezvous* from which the convoy sails, and the warranty is satisfied if the ship sail with convoy thence (*i*).

Where a policy provided that a ship might sail to the place of *rendezvous* to join convoy, it was held that she was protected in proceeding thither, although there was a convoy for ships on other destinations between her loading port and the appointed *rendezvous* (*k*). On the same principle, a warranty to sail with convoy for the voyage, means that the ship shall sail with such a convoy as the government may appoint (*l*). Whether, therefore, the insured vessel proceed under relays of convoy from station to station (*m*), or the ships of war keep with her for a portion only of the voyage (*n*), the warranty is complied with.

The master must use his best exertion to sail and keep with the convoy; but if separated from it by stress of weather, the underwriter is not discharged (*o*). Where a vessel, after sailing with convoy, is driven back by an accident into her lading port, she may sail again on her voyage without waiting for the next convoy, or joining convoy from any other port (*p*). And if the convoy be dispersed by a storm, the master may run for his port of discharge (*q*).

Any neglect to sail or keep with the convoy, is a breach of the warranty to sail with it. Thus, where signals from the convoy were neglected (*r*), and where a ship, after getting under weigh, waited for the master to come on board so long that she lost her place in the convoy (*s*), it was held that the underwriters were discharged.

Further, in order to satisfy this warranty, the master of the insured vessel should obtain sailing orders from the officer in command of the convoy; for unless he does so, he is not in

(*h*) *Cohen v. Hinckley*, *ubi supra*. This was a decision on the Convoy Act, 43 Geo. 3, c. 57, but it is applicable to other cases.

(*i*) *Lethulier's Case*, 2 Salk. 443; *Bond v. Gonzales*, *ib.* 445; *Gordon v. Morley*; *Campell v. Bordieu*, 2 Str. 1265.

(*k*) *Warwick v. Scott*, 4 Camp. 62.

(*l*) *Per* Lord Mansfield in *Smith v. Readshaw*, 2 Park on Ins. 510.

(*m*) *De Garey v. Clagget*, 2 Park on Ins. 511.

(*n*) *D'Eguino v. Bewicks*, 2 H. Bl. 552.

(*o*) *Jefferyes v. Legendra*, Shower, 297.

(*p*) *Laing v. Glover*, 5 Taunt. 49. This was a decision on the Convoy Act, 43 Geo. 3, c. 57, but the principle of it applies to cases of warranty.

(*q*) *Audley v. Dutt*, 2 B. & P. 111; *Manning v. Gist*, 1 Marsh. on Ins. 373; *S. C.*, 3 Doug. 74.

(*r*) *Taylor v. Woodness*, 2 Park on Ins. 510.

(*s*) *Waltham v. Thompson*, 1 Marsh. on Ins. 381.

effect under its protection (*t*). And it is his duty to use every exertion to obtain them before his ship leaves the *rendezvous*(*u*). Where, however, the master is unable to obtain sailing orders owing to any misfortune, as where the weather is so bad that no boat can be sent for them(*x*), or he is prevented from obtaining them by circumstances over which he has no control, as by the refusal or neglect of the commander of the convoy to comply with his application (*y*), the underwriter is not discharged (*z*).

The warranty of neutrality occurs when the policy expressly Of neutrality. warrants the neutrality of the ship or goods in general terms, or does so impliedly, by describing them as belonging to a particular neutral state. Property is said to be neutral when it belongs to persons who are the subjects of a country which is at peace with both the belligerents, or to persons who have by residence acquired the character of its subjects for commercial purposes(*a*). In the latter class are comprised, not only all persons who have become domiciled in the country in question, but also all foreigners who reside there, even although they may have an *animus revertendi*(*b*). This warranty implies, not only that at the commencement of the risk the property is neutral, but also that, so far as the acts of the assured are concerned, it shall continue to be so. Thus, if a ship warranted neutral forfeits her neutrality by the wilful act of either the master or the owner, the warranty is broken(*c*). If, however, the ship or cargo be neutral at the time when the voyage commences, the risk of future war is taken by the underwriter(*d*). So far, however, as relates to the acts of the assured, this war-

(*t*) See the judgments of Lord Mansfield in *Hibbert v. Pigou*, 2 Park on Ins. 500; and of Buller, J., in *Webb v. Thompson*, 1 B. & P. 6.

(*u*) See the judgment of Lord Eldon in *Anderson v. Pitcher*, 2 B. & P. 164; S. C., 3 Esp. 124.

(*x*) *Victoria v. Cleve*, 2 Str. 1250; see also *Magalhaens v. Busher*, 4 Camp. 54, and *Sanderson v. Busher*, *ib.* note, in which cases the undertaking to sail with convoy was contained in the bills of lading.

(*y*) *Verdon v. Wilmot*, 2 Park on Ins. 500, note.

(*z*) See the judgment of Buller, J., in *Webb v. Thompson*, 1 B. & P. 6.

(*a*) This subject will be found ably

and fully treated of in 1 Arnould on Ins. 653 (2nd edit.). See also 1 Wheaton's International Law, 132.

(*b*) *The Indian Chief*, 3 Rob. 12; *The Anna Catharina*, 4 Rob. 107; *The President*, 5 Rob. 277; *Tabbs v. Bendelack*, 4 Esp. 108; 3 B. & P. 207, note.

(*c*) *Garrels v. Kensington*, 8 T. R. 230. This rule must be confined, however, to the acts of the assured or his agents; a policy on goods is not vitiated by a negligent omission on the part of the master of the vessel in which they are shipped, to procure proper papers. *Carruthers v. Gray*, 3 Camp. 142; 16 East, 35.

(*d*) *Eden v. Parkison*, 2 Doug. 732; *Tyson v. Gurney*, 3 T. R. 477.

ranty is continuous, whether the policy be a time or a voyage policy (e).

If the master violates a blockade, resists the right of search, or commits any other breach of neutral conduct, the warranty is broken (f).

It has been questioned whether a ship warranted to belong to a particular country, must not be owned and navigated according to the laws and treaties in force in that country (g). However this may be, it is clear that the mere fact of her belonging to such state will not suffice, but she must be completely documented as such a ship (h). If she be deficient in this respect during any portion of the voyage, the warranty is not satisfied (i).

In addition to the documents which ordinarily constitute a ship's papers, and which have been already enumerated (k), the master must also carry the flag and pass of the country to which it is warranted that the ship belongs; for a vessel is considered to belong to the country under the pass and colours of which she sails (l).

One of the most usual proofs of a breach of the warranty of neutrality is a sentence of condemnation pronounced by a foreign Admiralty Court of competent jurisdiction, on the ground of an infraction of neutrality. It is now well settled that the sentence of such a Court, being a proceeding *in rem*, is conclusive as against all the world, as to every fact upon which the judgment of the Court proceeds, and which appears clearly on the face of the sentence (m); even although it may appear on the face of the sentence that the conclusion was arrived at through the medium of rules of evidence which are peculiar to the country

(e) See the judgment in *Sillem v. Thornton*, 3 E. & B. 883.

(f) *The Maria*, 1 Rob. 340; 1 Arnould on Ins. 669 (2nd edit.); Phillips on Ins. c. 9, s. 8, and the American cases cited there.

(g) *Baring v. Clagett*, 3 B. & P. 201.

(h) *Rich v. Parker*, 7 T. R. 705; *Barzillay v. Lewis*, 2 Park on Ins. 526; 3 Doug. 126; *Baring v. Clagett*, *ubi supra*.

(i) *Rich v. Parker*, *ubi supra*; see also *Bird v. Appleton*, 8 T. R. 562.

(k) *Ante*, p. 101.

(l) *The Vigilantia*, 1 Rob. 13; *The Frow Elizabeth*, 5 Rob. 2; *The Success*,

1 Dods. 131. With respect to the cargo, it is, by the law of this country, otherwise. See *The Elizabeth* and *The Vreede Scholtys*, 5 Rob. 5, note.

(m) See the judgment of Lord Ellenborough in *Bolton v. Gladstone*, 5 East, 160; *Baring v. Clagett*, *ubi supra*; *Lothian v. Henderson*, *ib.* 499; *Garrels v. Kensington*, 8 T. R. 230; the judgment of Tindal, C. J., in *Dalgleish v. Hodgson*, 7 Bing. 504; and *Havelock v. Lockwood*, 8 T. R. 276; see also *ante*, p. 43, note (i). This subject is fully discussed in the notes to *The Duchess of Kingston's Case*, 2 Smith, L. C. 690, 5th ed.

in which the ship was condemned, and which are not admissible upon general principles (*n*).

But if the ground upon which the Court rests its adjudication, and declares the vessel to be a valid prize, is one which shows that according to the law of nations there has been, or may have been, no infraction of neutrality, as, for instance, if it appear on the face of the sentence, either that the vessel *was* condemned, or that *it is doubtful whether she was not* condemned for the contravention of a regulation imposed, not by the law of nations, but by an arbitrary ordinance of the capturing power not assented to by the neutral state, the sentence is not conclusive to prove the breach of warranty (*o*). The ground upon which the condemnation proceeds must appear on the face of the sentence free from doubt and ambiguity; if it is left in uncertainty, or can be collected by inference only (*p*), or if, although the ship is declared "a good and valid prize," no specific ground is stated upon which the Court proceeded, the parties are not concluded from contesting the breach of warranty.

The sentence of a Prize Court is moreover conclusive only as to the existence of the ground upon which it expressly professes to decide; it is not so as to the premises which are stated in it as leading to the adjudication (*q*). If two grounds are stated in the sentence, upon either of which the Court may have proceeded, evidence will be admitted to show that it acted, in fact, upon one which was insufficient to warrant the condemnation (*r*).

The last express warranty which we have mentioned above, is that against confiscation or seizure of the ship in her port of discharge, or against capture or seizure generally. A warranty against confiscation by the government, in the ship's port of discharge, is not broken by the seizure of the vessel in that port

Of freedom from seizure in port of discharge, or capture.

(*n*) *Bolton v. Gladstone*, 2 Taunt. 85.

(*o*) *Bernardi v. Motteux*, 2 Doug. 574; *Pollard v. Bell*, 8 T. R. 434; *Bird v. Appleton*, *ib.* 562; *Price v. Bell*, 1 East, 663; *Siffken v. Lee*, 2 N. R. 484, and the judgment of Lord Alvanley in *Baring v. Clagett*, 3 B. & P. 201. It is necessary to recollect, in considering the effect of the sentences of foreign Courts as evidence of a breach of the warranty of neutrality, that there is a distinction between the conclusiveness of the judg-

ment as evidence of the facts which it asserts, and its conclusiveness as evidence of a breach of the warranty. In many cases the sentence may be conclusive as evidence of the specific facts alleged in it, and yet those facts may not show any breach of the warranty.

(*p*) See the judgment of Lawrence, J., in *Calvert v. Bovill*, 7 T. R. 527; *Dalglish v. Hodgson*, 7 Bing. 504.

(*q*) *Christie v. Secretan*, 8 T. R. 192.

(*r*) *Bernardi v. Motteux*, 2 Doug. 574.

by the forces of another state, although this be done with the permission of the local government (*s*).

The question which most frequently arises under this warranty is whether the ship was in port, or not, at the time of her seizure. This is a question for the jury (*t*). The word "port" is not to be taken in its narrow or strict legal sense, but rather as meaning the place of discharge agreed upon by the assured and underwriters (*u*). A seizure in a roadstead, where vessels often partially unloaded before crossing a bar, was held to be a seizure in port within the meaning of this warranty (*x*). So, when a vessel was seized whilst anchored in the outer road of a bar harbour, at two miles distance from the point at which ships usually lay to in order to discharge enough of their cargoes to enable them to pass the bar, it was held that she had arrived in her port of discharge within the meaning of the warranty (*y*). Where, however, a vessel was captured whilst anchored off the port, three miles without the roadstead within which ships were accustomed to unload in order to cross the bar into the inner harbour, it was held otherwise (*z*). This warranty is not broken where the capture occurs at a place neither within the actual port, nor within that part of the haven at which vessels unload (*a*); and a capture by a force issuing from the port of discharge (*b*), or on the high seas, or within the headlands of a river, where there is no port or place of unloading (*c*), is not within the warranty.

A warranty against "capture and seizure and the consequences of any attempt thereof," is not confined to legal capture or seizure; therefore where an English ship, insured by a policy which contained such a warranty, was fired into from a Russian fort and sunk, there being then no war between England and Russia, it was held that the underwriters were protected by the warranty (*d*). So, where coolie emigrants piratically ran away with the ship and stores, it was held that the underwriters of

(*s*) *Levi v. Allnutt*, 15 East, 267.

(*t*) *Reyner v. Pearson*, 4 Taunt. 662.

(*u*) See the judgment of Lord Ellenborough in *Dalglish v. Brooke*, 15 East, 295; *Jarman v. Coape*, 2 Camp. 613; 13 East, 394.

(*x*) *Maydew v. Scott*, 3 Camp. 205; see also *Orme v. Taylor*, *ib.* 204.

(*y*) *Dalglish v. Brooke*, *ubi supra*.

(*z*) *Levy v. Faughan*, 4 Taunt. 387.

(*a*) *Keyser v. Scott*, 4 Taunt. 660;

see also *Whitwell v. Harrison*, 2 Ex. 127.

(*b*) *Mellish v. Stanforth*, 3 Taunt. 499; see also *Brown v. Tierney*, 1 Taunt. 517.

(*c*) *Baring v. Faux*, 2 Camp. 541.

(*d*) *Powell v. Hyde*, 5 E. & B. 607. See also *Ionides v. The Universal Marine Insurance Company*, 14 C. B., N. S. 259, and *ante*, p. 366, as to what is a loss by a consequence of hostilities.

a policy on the stores were protected by a warranty against "capture or seizure" (e).

If the vessel, in order to avoid capture in port, goes to a port out of the course of her voyage, the underwriters are discharged (f).

It is a general principle of insurance law that the underwriters are not liable for losses arising from the insufficiency, or defective quality, or condition of the thing insured (g). The assured in effecting an insurance for a *voyage* is taken by law impliedly to warrant that the vessel shall be seaworthy at the commencement of the risk (h). Unless this were so the consequences would be very mischievous, for the effect of insurance would be to render those interested in the ship careless as to her condition, and as to the lives of the persons engaged in navigating her (i). Such a warranty is implied, although the insurance is on salvage (k). There is no implied warranty of seaworthiness in a time policy (l).

Implied warranty of seaworthiness.

As in the case of all other warranties, the knowledge or ignorance of the assured with reference to the fact warranted is immaterial: therefore if the vessel was, in fact, unseaworthy at the commencement of the risk, the policy is avoided, notwithstanding the *bona fides* and honesty of the assured (m).

As in other such cases, it is also immaterial to what cause the loss was attributable; for the warranty of seaworthiness, like every other warranty, is a *condition* on the non-performance of which the policy is void, whether the loss be occasioned by the unseaworthiness or by any other cause (n). By seaworthiness

(e) *Kleinwort v. Shepherd*, 1 E. & E. 447.

(f) *O'Reilly v. The Royal Exchange Assurance Company*, 4 Camp. 246.

(g) 1 Park on Ina. 332. Even where there is no warranty of seaworthiness the shipowner cannot, if he sent the ship to sea unseaworthy, recover against the underwriter the expense of repairs rendered necessary by her being so sent to sea. *Fawcus v. Sarafeld*, 6 E. & B. 192. See also *Thompson v. Hopper*, *ib.* 172, which decision was reversed in *Cam. Scacc.*, 1 E., B. & E. 1038.

(h) See 1 Park on Ina. 332-352, and the judgment of the Exchequer Chamber in *Small v. Gibson*, 16 Q. B. 156. See also *Gibson v. Small*, 4 H. of L. C. 353. This implied warranty applies

only to the commencement of the voyage, but if, during the voyage, the assured does any act voluntarily, by which the ship is made unseaworthy, and a loss thereby ensues, the underwriter is not liable. See the judgment in *Sillem v. Thornton*, 3 E. & B. 883.

(i) See the judgment of Lord Redesdale in *Wilkie v. Geddes*, 3 Dow, 60.

(k) *Knill v. Hooper*, 2 H. & N. 277.

(l) *Gibson v. Small and Thompson v. Hopper*, *ubi supra*.

(m) *Lee v. Beach*, 1 Park on Ina. 342; *Oliver v. Cooley*, *ib.* 343; see also the judgment of Lord Eldon in *Douglas v. Scougall*, 4 Dow, 276.

(n) See the judgment of the Exchequer Chamber in *Small v. Gibson*, *ubi supra*.

is meant a fit state at the time of sailing as to repairs, equipment, and crew, and in all other respects, to encounter the ordinary perils of the voyage insured (*o*).

The ship must, generally, be staunch, strong, of sound materials (*p*), and of a proper construction (*q*); nor may she be loaded with a greater cargo than she can safely carry (*r*); her anchors and cables must be sufficient (*s*), and she must be properly equipped with sails and other stores (*t*). It is not always enough that a ship is supplied with such sails as are essential to her safety from the perils of the sea, since in time of war she must be able to keep up with convoy and avoid capture (*u*).

If a vessel be insured "at and from a port," she need not be, while in port, in a fit condition to go to sea. The warranty is complied with if while there she is in such a condition as to enable her to lie in reasonable security till she is properly repaired, or otherwise fitted out for the voyage (*v*). So, if the voyage be such as to require a different complement of men, or state of equipment, in different parts of it, as, if the voyage be down a canal or river, and thence in the open sea, it is enough if the vessel is, at the commencement of each stage of the navigation,

(*o*) See *per* Parke, B., in *Dixon v. Sadler*, 5 M. & W. 414. Proof of this warranty is sometimes waived by an admission on the part of the underwriter that the ship is seaworthy. See *Parfitt v. Thompson*, 13 M. & W. 392; *Phillips v. Nairne*, 4 C. B. 343; *Dupont de Nemours v. Vance*, 19 How. (American), 162.

(*p*) *Douglas v. Scougall*, 4 Dow, 276; and see *ante*, p. 46.

(*q*) *Watt v. Morris*, 1 Dow, 32. In this case a vessel without knees was held to be unseaworthy for a foreign voyage.

(*r*) *Weir v. Aberdeen*, 2 B. & A. 320. It might be inferred from the expressions used in the judgment in this case that the policy is not avoided if an unseaworthiness existing at the commencement of the voyage is remedied before any actual loss occurs. But the facts of this case were peculiar, and the general rule is clearly otherwise. See *Forshaw v. Chabert*, 3 B. & B. 158. And considering the nature of a warranty, it is difficult to see that, even in cases of unseaworthiness resulting only from mistake or accident, there can be any exception of this sort. See also *M'La-*

nahan v. The Universal Insurance Company, 1 Peters (American) Rep. 170.

(*s*) *Wilkie v. Geddes*, 3 Dow, 57. Where one of the rules of an insurance club required that all chain cables should be tested, it was held that the testing of the cables was not a condition precedent, but only a direction to the committee as to what they were to point their attention to. *Harrison v. Douglas*, 3 A. & E. 396. But where one of the rules was, that unless certain stores were provided the ship *should not be insured*, it was held that the effect of a noncompliance with this provision was to render the ship unseaworthy. *Stewart v. Wilson*, 12 M. & W. 11.

(*t*) *Wedderburn v. Bell*, 1 Camp. 1. It would seem that a reasonably sufficient supply of medicines ought to be on board. See *Woolf v. Clagett*, 3 Esp. 257.

(*u*) See the observations of Lord Ellenborough in *Wedderburn v. Bell*, *ubi supra*.

(*v*) *Parmeter v. Cousins*, 2 Camp. 235; *Forbes v. Wilson*, 1 Park on Ins. 344, note; *Hibbert v. Martin*, *ib.*; *Smith v. Surridge*, 4 Esp. 25; *Annen v. Woodman*, 3 Taunt. 299.

properly manned and equipped for it (*x*). The warranty of seaworthiness is relative to the character of the vessel and nature of the voyage. Thus, in a recent case, a vessel was built in this country for the purpose of navigating shallow rivers in India, and was insured for the voyage out. All means were used, by temporary appliances, to render her as fit as possible for the voyage; but, by reason of her construction, it was found impossible to render her absolutely fit for the ordinary perils of a sea voyage. The underwriters had full knowledge of the circumstances, and received an extra premium on account of the nature of the risk. Under these circumstances it was held, that the extent of the warranty of seaworthiness was relative to the capacity in this respect of the vessel insured, and therefore that it was satisfied by her being, at the commencement of the risk, as seaworthy as she could then be made (*y*).

The ship must be provided with a master of competent skill, acquainted with the navigation, and the ports for which she is bound (*z*). In a case at Nisi Prius, in which it appeared that, on a voyage from the Mauritius to London, the captain had gone on board ill without taking any one with him who was competent to take charge of the ship in the event of his illness increasing, the jury were directed that if, in their opinion, considering the length of the voyage, and the circumstances under which it was undertaken, the ship was not sufficiently manned, they must find for the underwriters (*a*).

A competent and sufficiently numerous crew must be engaged for the whole voyage (*b*). But this warranty does not include an undertaking that the master or crew shall do their duty during the voyage. Their negligence or misconduct therefore, supposing them to have been originally competent, is no defence

(*z*) *Dixon v. Sadler*, 5 M. & W. 414; *Biccard v. Shepherd*, 14 Moore, P. C. C. 471; *Bouillon v. Lupton*, 15 C. B., N. S. 115.

(*y*) *Burges v. Wickham*, 3 B. & S. 669.

(*x*) *Tait v. Levi*, 14 East, 481; see also *ante*, p. 46.

(*a*) *Clifford v. Hunter*, Moo. & Malk. 103; S. C., 3 C. & P. 16. The correctness of this ruling has been doubted in America. Mr. Chancellor Kent, in noticing it, remarks, that the warranty of seaworthiness "would seem to imply no more than that the assured must have a sound and well-equipped vessel

with reference to the voyage, and have a competent person as master, a competent person as mate, and a competent crew as seamen." See 3 Kent Comm. 287, note (*a*). It must be observed, however, that, in *Clifford v. Hunter*, the captain was ill when he went on board, and it may be doubted, looking at the peculiar circumstances of the case, whether Lord Tenterden meant to lay down the general proposition which has been sometimes attributed to him.

(*b*) *Shore v. Bentall*, 7 B. & C. 798, note.

to an action on the policy (c). Where the master and crew negligently and improperly threw overboard ballast, whereby the vessel became unseaworthy, and was lost by a peril of the sea, it was held that the underwriters were liable, even although the acts were not barratrous (d). When a ship on a voyage from Cuba to Liverpool sailed with eight men for Liverpool and two for Jamaica, and touched at Jamaica to land the two men and procure others, it was held that she was not seaworthy for the whole voyage when she sailed, although it was impossible at Cuba to procure the proper complement of men for the voyage (e). A mere non-compliance with the provisions of the existing statutory enactments respecting the agreement with the crew does not, however, constitute unseaworthiness (f). Where a whaler, which was insured with liberty to chase and capture prizes, had at the time of insurance lost some of her crew by death and casualties, so as to be unable to carry out all the purposes of her voyage, it was ruled at *Nisi Prius* that she might be deemed seaworthy if she had a competent crew to pursue any part of her adventure and to navigate the vessel home (g).

The vessel must also usually be provided with a pilot of competent skill in those places where the nature of the navigation renders one necessary (h). On leaving a harbour where there is an establishment of pilots, the duty of procuring one is clear (i); but as it is not always possible to procure one on entering port, it is sufficient, in this case, if due diligence to obtain one is used (k).

The warranty of seaworthiness in a voyage policy is, it will be observed, confined to the commencement of the risk. The risk commences at the port, when the insurance is "at and from" a particular port, and at the commencement of the

(c) *Busk v. The Royal Exchange Insurance Company*, 2 B. & Ald. 73; *Walker v. Matland*, 5 B. & Ald. 171; *Holdsworth v. Wise*, 7 B. & C. 794; *Shore v. Bentall*, 7 B. & C. 798, note; *Bishop v. Pentland*, 7 B. & C. 219; *Dixon v. Sadler*, 5 M. & W. 405; *S. C.*, 8 M. & W. 895; see also *Phillips v. Headlam*, 2 B. & Ad. 380.

(d) *Dixon v. Sadler*, *ubi supra*; see also *Redman v. Wilson*, 14 M. & W. 476.

(e) *Forshaw v. Chabert*, 3 B. & B. 158.

(f) *Redmond v. Smith*, 7 M. & G. 457.

(g) *Hucks v. Thornton*, Holt, 30.

(h) *Law v. Hollingsworth*, 7 T. R. 160. The principle on which this case is decided is correct, but as a decision on the particular facts it must be considered to be overruled. See the judgment in *Dixon v. Sadler*, 5 M. & W. 415; see also *ante*, p. 195.

(i) See the judgment of Lord Tenterden in *Phillips v. Headlam*, 2 B. & Ad. 382.

(k) *Phillips v. Headlam*, *ubi supra*.

voyage, when the insurance is "from" a given port (*l*). If the ship is seaworthy at this time the warranty is complied with, although she becomes otherwise immediately afterwards (*m*); for the assured cannot know in what condition the vessel may be after leaving port (*n*).

Where the voyage out and home is insured, and the contract is an entire one, although the ship is to touch at several ports, the warranty is complied with if she be seaworthy when she first sails on the voyage, although she is not so on leaving the intermediate ports (*o*).

Since *time policies* have become more common in this country Time policies. the question has frequently arisen how far any warranty of seaworthiness is implied in them, and it has been contended that even if there be in these policies no such general warranty as exists in *voyage policies*, still that a warranty of seaworthiness at the commencement of the risk, so far as lies in the power of the assured to effect it, ought to be implied; so that if the ship had met with damage before, and could have been repaired by the exercise of reasonable care and pains, and was not, the policy, even though a time policy, would not attach (*p*).

It has now, however, been decided by the House of Lords that in a time policy, effected upon a vessel then at sea, there is no implied warranty that the ship is seaworthy at the time when the policy is intended to attach (*q*). It has also been held that there is no such warranty although the policy be effected on an

(*l*) See the judgment in *Small v. Gibson*, 16 Q. B. 156.

(*m*) See the judgment of Lord Eldon in *Watson v. Clark*, 1 Dow, 336. If, however, the subsequent unseaworthiness arises immediately from the act of the assured himself, the underwriter will be discharged. See the cases cited *ante*, p. 387.

(*n*) See the judgment of Lord Mansfield in *The Earl of March v. Pigot*, 5 Burr. 2802.

(*o*) *Bermon v. Woodbridge*, 2 Doug. 781; see *ante*, p. 276, as to single and double voyages.

(*p*) See the judgment in *Small v. Gibson*, 16 Q. B. 160, 161, and the observations of Lord St. Leonards, Lord Campbell, Maule, J., and Martin, B., in *Gibson v. Small*, 4 H. of L. Cases, 353.

(*q*) *Gibson v. Small*, 4 H. of L. Cases, 353. In *Jenkins v. Heycock*, 8 Moore's

P. C. C. 351, it was held that even if there were any warranty of seaworthiness in a time policy, such a warranty would not continue after the commencement of the voyage, but would be satisfied by the ship being seaworthy at the commencement of the risk. See also *Michael v. Tredwin*, 17 C. B. 551, the facts of which case came within the principle of *Gibson v. Small*. Since the decision of the cases above cited, it may be taken that a warranty of seaworthiness is in no case implied in a time policy. See also *Hollingworth v. Brodric*, 7 A. & E. 40. It appears that the expression "good," which is used in these and other policies in describing the ship, is a merely commendatory expression, and that no warranty is to be implied from its use. See the judgment in *Small v. Gibson*, cited above.

outward bound ship lying in a British port at which the insuring owner resides (*r*). It was also held in the same case that a plea alleging that the assured had knowingly, wilfully and improperly sent the ship out to sea in an unseaworthy state, and when she was not in a fit and proper condition safely to go to sea, afforded no answer to the action, the declaration alleging that the loss had been caused by perils of the sea, and the plea containing no averment that the loss had been occasioned by the unseaworthiness (*s*). A plea containing the same allegations, and further averring that the assured "wrongfully and improperly caused and permitted the ship to be and remain on the high seas, near to the sea shore, for a great length of time, in the state and condition aforesaid, and without a master, and without a proper crew to manage and navigate her on her said voyage, during which time the ship, by reason of the premises, was wrecked, was held to be good; since it showed that the loss had resulted from the wrongful acts of the assured, although the perils of the sea might be the proximate cause of it (*t*), but the jury having found that the immediate cause of the loss was not the unseaworthiness, it was held that the underwriter was liable; and further, that the judge acted correctly in not leaving to the jury any question upon evidence which was adduced to show that although the unseaworthiness was not the immediate cause of the loss, still it would not have occurred if the ship had been seaworthy when she went to sea (*u*).

Although there is no warranty of seaworthiness the underwriter is not responsible, even in the case of a time policy, for the cost of repairs rendered necessary by the unseaworthy state of the vessel, although the assured have acted without fraud and the defects were not known to him; for in this case the damage does not arise from any peril insured against, but from the vice of the subject of insurance (*v*).

REPRESENTATIONS.

A representation, as the term is used in insurance law, means a statement either verbal or in writing, made by the assured to the underwriter of some circumstance connected with the pro-

(*r*) *Thompson v. Hopper*, 6 E. & B. 172, dissentiente Erle, J. See also *Fawcus v. Sarafeld*, *ib.* 192.

(*s*) *Thompson v. Hopper*, *ubi supra*, dissentiente Erle, J.

(*t*) *Thompson v. Hopper*, *ubi supra*.

(*u*) *Thompson v. Hopper*, E., B. & E. 1038, in Cam. Scacc., reversing *Thompson v. Hopper*, 6 E. & B. 937.

(*v*) *Fawcus v. Sarafeld*, 6 E. & B. 192.

posed risk, and which statement is either not embodied in the written contract of insurance at all, or, if inserted in it, is not intended to be of its essence, and consequently need not be literally and strictly complied with (*x*). Representations differ from warranties, inasmuch as the latter are, as we have seen, integral parts of the contract; they are not, like representations, collateral to it, but amount to conditions which must be strictly complied with, and on the non-performance of which the contract is void (*y*).

How they differ from warranties.

Representations either amount to direct assertions by the assured as to the past, present, or future existence of particular facts, or to statements by him of his mere information, expectation, or belief as to such facts.

Different kinds of representation.

Representations, to be binding, must also be made when the policy is effected (*z*), or during the negotiation for it (*a*).

Representations are admissible to add to or to explain the policy, but not to contradict it. Thus, where the policy reserved leave to "touch at" the Cape de Verd Islands, a letter showing that the intention was to permit the ship to take in salt there, and which had been communicated to the underwriters, was admitted (*b*). On the other hand, in an action on a policy "at and from London to Berbice," it was held that it could not be shown that the risk was to commence at sea, although a letter was produced by the broker to the underwriter when the policy was effected, by which it appeared that the ship was out of the course from London to Berbice, and the words "at sea" were thereupon inserted in another part of the policy (*c*). A representation cannot, however, be objected to because it supersedes an usage or an implied warranty (*d*).

When admissible in evidence.

(*x*) See *Pawson v. Watson*, 2 Cowp. 785, the cases cited below, and the judgment in *Behn v. Burness*, in Cam. Scacc., 32 L. J., Q. B. 204, cited *ante*, p. 241, note (*r*). The following is an instance of a statement which, although occurring in the policy, was held from its nature to amount only to a representation. Where the policy contained the words "to return 10*l* per cent. for convoy and arrival," they were held to be only a representation, and not a warranty that the ship would sail with

convoy. *Reid v. Harvey*, 4 Dow, 97; see also *Hodgson v. Richardson*, 1 W. Bl. 463; *Thompson v. Buchanan*, 4 Brown, P. C. 484.

(*y*) *Ante*, p. 377.

(*z*) *Dawson v. Atty*, 7 East, 367.

(*a*) *Edward v. Footner*, 1 Camp. 530.

(*b*) *Urquhart v. Barnard*, 1 Taunt. 460.

(*c*) *Redman v. London*, 3 Camp. 503; *S. C.*, 5 Taunt. 462.

(*d*) *Duer on Ins.*, Lect. 14, sects. 17 and 18.

Effect of on policy.

A representation to the first underwriter is considered as repeated to all subsequent underwriters, since the latter are supposed to rely to some extent upon the skill and discretion of the first (e).

So, if the first signature is fraudulent, and merely colourable in order to induce others to underwrite, the policy is avoided (f). This rule is, however, strictly confined to representations made to the first underwriter. Representations made to intermediate underwriters are not considered to be made to those who follow (g); nor does the rule apply to the underwriters of a separate policy (h).

Effect of fraud.

Where there is actual or *moral* fraud in a material representation the contract is avoided upon the general principles applicable to ordinary contracts. But the contract of insurance being one *uberrimæ fidei*, it is settled that if a representation material to the risk is substantially untrue, the policy is thereby rendered voidable, at the election of the underwriter, even although the misrepresentation is not fraudulent in the ordinary sense of the word, that is to say, not untrue within the knowledge of the party making it (i). Under a plea in an action on

(e) *Barber v. Fletcher*, 1 Doug. 305; and see *Pawson v. Watson*, 2 Cowp. 786. In *Forrester v. Pigou*, 1 M. & S. 13, Lord Ellenborough stated that he thought this proposition must be received with great qualification. In *Pawson v. Watson*, Lord Mansfield appears to have held that the rule applied to statements relating immediately to the risk, such as assertions as to whether the ship is or is not missing, but not to collateral undertakings relating to such matters as the number of guns the ship is to carry. See Duer on Ins., Lect. 14, note 11. Nor does the rule apply where the communication to the first underwriter is of a fact which increases the risk, and is therefore made for the benefit of the underwriter.

(f) *Wilson v. Duckett*, 3 Burr. 1361; see also *Wittingham v. Thornburgh*, 2 Vern. 206, and *Sibbald v. Hill*, 2 Dow, 263. In these cases the first underwriter is called "a decoy duck." The continental writers call him "a dolphin" who leaps that others may follow. See Duer on Ins., Lect. 14, s. 23, note (b).

(g) *Bell v. Carstairs*, 2 Camp. 543;

Brine v. Featherstone, 4 Taunt. 869; see also *Marsden v. Reid*, 3 East, 572.

(h) Duer on Ins., Lect. 14, s. 21.

(i) *Macdowall v. Fraser*, 1 Doug. 260; *Fitzherbert v. Mather*, 1 T. R. 12; *Feise v. Parkinson*, 4 Taunt. 640, and *Holland v. Russell*, 1 B. & S. 424. In the earlier cases misrepresentations were held to avoid the policy only when they were actually and *morally* fraudulent, that is, untrue in fact, and either known to be untrue by those who made the assertion, or not known by them to be true. It was also held that representations formed no part of the contract. See the judgment of Lord Mansfield in *Pawson v. Watson*, 2 Cowp. 788. In the later cases it is still said that a representation is no part of the contract, but it is held that, even where the fraud is constructive or legal only, as, for instance, where the assured has no intention to deceive the underwriter, but innocently misleads him on a material point, this is sufficient to invalidate the policy. See *Feise v. Parkinson*, and *Fitzherbert v. Mather*, *ubi supra*; also *Dennistoun v. Lilley*, 3 Bligh, 202, Mr.

a policy alleging a representation to have been false to the knowledge of the assured, a concealment or representation, not fraudulent in the ordinary sense, may be shown (*k*).

Representations which relate to material facts must be complied with. The following are instances of representations, the substantial non-compliance with which has been held to avoid the policy. A representation that the ship was safe on a particular day (*l*); that she belonged to a neutral state (*m*); that she was furnished with a necessary trading licence (*n*); that she would sail on a given day (*o*); and that she was to carry a particular armament (*p*). But a substantial compliance with a material representation is sufficient (*q*).

How far they must be complied with.

Where the assured asserted that his vessel "mounted twelve guns and twenty men," and the ship sailed with less than this number of men and guns, but carried in addition a number of boys and several swivels which made her force in fact greater than if she had been equipped with the twelve guns and twenty men, it was held that this being a representation and not a

Duer, the American writer, in his work on Insurance, objects to this view, alleging that the true reason why a misrepresentation vitiates a contract is, because it is not merely a collateral statement, but a substantive part of the contract, and that the English authorities have adopted the other view only in order to avoid a violation of the rule that a written instrument cannot be varied by parol statements. See Duer on Ins., Lect. 14, s. 5. It will be seen, however, from the above statement, that the same end is arrived at whichever view is adopted, so that the question is of no practical moment. If a system of law had to be formed *de novo*, the American view might perhaps be thought, in theory, more logical than ours; but there is no inconsistency in the view taken by our Courts: the only difficulty is to determine what is included within the expression "fraud." Some of our most eminent jurists have considered that *legal* without *moral* fraud invalidates a contract; see the judgment of Lord Abinger in *Cornfoot v. Powke*, 6 M. & W. 377, and the cases collected in 2 Smith, L.C. 91 (5th edit.); whilst others have held that in order to vitiate ordinary contracts there must be actual or

moral fraud. See the judgment of Parke, B., in *Cornfoot v. Powke*, and 2 Smith, L. C., *ubi supra*. Even these latter, however, allow that in cases of insurance a misrepresentation of material facts is equivalent to fraud. See the observations of Parke, B., in *Moons v. Heyworth*, 10 M. & W. 157, and in *Elkin v. Janson*, 13 M. & W. 662. It is now well settled, however, that in order to invalidate contracts, other than contracts of insurance, by reason of any untrue representation, *moral* fraud must be proved. See *Shrewsbury v. Blount*, 2 M. & Gr. 475; *Ormrod v. Huth*, 14 M. & W. 651; *Evans v. Collins*, 5 Q. B. 804; *Rawlings v. Bell*, 1 C. B. 951; *Thom v. Bigland*, 8 Ex. 725, and *The North British Insurance Company v. Lloyd*, 10 Ex. 528.

(*k*) *Anderson v. Thornton*, 8 Exch. 425.

(*l*) *McDowall v. Fraser*, 1 Doug. 260.

(*m*) *Steel v. Lacy*, 3 Taunt. 285.

(*n*) *Feise v. Parkinson*, 4 Taunt. 640.

(*o*) *Dennistoun v. Lillie*, 3 Bligh. 202.

(*p*) *Edwards v. Footner*, 1 Camp. 530.

(*q*) See *per* Lord Mansfield in *De Hahn v. Hartley*, 1 T. R. 345; see also *Van Tungen v. Dubois*, 2 Camp. 151.

warranty, and having been substantially complied with the underwriters were liable (*r*).

Where freight advanced was insured on a ship and goods "lost or not lost from Monte Video to Havre," the greater part of the cargo having been shipped at Santa Cruz and not at Monte Video, it was held that there was no misdescription of the interest of the assured (*s*).

The meaning of representations may sometimes be extended by implication beyond their express words. Thus, where a ship was represented to be American, the Court held that this implied that she was documented as such (*t*). And where the insurance was on ship "at and from Genoa, the adventure to begin from the loading to equip for this voyage," it was held that these words implied that Genoa was the port of loading (*u*).

Where the goods were insured from Lisbon to the Clyde at a premium of ten per cent., "to return five per cent. for convoy and arrival," it was held that the alternative of the vessel's sailing with convoy, which was implied by these words, was a material representation, and that as at the time it was made the assured knew that in fact she had sailed without convoy the policy was avoided (*v*).

Where a representation was made at the time of effecting the policy as to the order in which the ship would proceed to certain places on the voyage insured, and this representation was true at the time when it was made, that is to say, it was then intended that she should sail in this course, it was held that a non-compliance with it, owing to a circumstance over which the assured had no control, namely, the refusal of the crew to pursue the voyage in the order mentioned from a fear of pirates, did not discharge the underwriters (*x*).

The fact that *Lloyd's List* would, if referred to by the underwriter, have shown the incorrectness of the statement, does not avoid the legal consequence of a misrepresentation (*y*).

Representations respecting future events do not differ in

(*r*) *Pawson v. Watson*, 2 Cowp. 785.

(*s*) *Ellis v. Lafone*, 8 Ex. 546.

(*t*) *Steel v. Lacy*, 3 Taunt. 285.

(*u*) *Hodgson v. Richardson*, 1 W. Bl. 463; see also *Kirby v. Smith*, 1 B. & A. 672; *Ratcliffe v. Shoolbred*, 1 Park on

Ina. 290.

(*v*) *Reid v. Harvey*, 4 Dow, 97.

(*x*) *Driscoll v. Passmore*, 1 B. & P. 200.

(*y*) *Mackintosh v. Marshall*, 11 M. & W. 116.

principle from those which relate to past or present facts (*z*); nor do they, if positive, differ from them in effect. In practice, however, representations of the former class are more often construed as referring to the mere expectation or belief of the party making them, especially if they relate to events over which he has no control. Thus, where the owner of *goods* made a representation as to the time when the vessel containing them would sail, this was held to be merely a representation as to his expectation on the subject (*a*). Where, however, the agents of the shipowners sent to them a letter stating that the ship would sail on the 1st of May, and they showed this letter to the underwriters on the ship and goods as the advice of the agents, it was held that this expression was positive, and not the statement of an expectation only, and, the ship having sailed on an earlier day, that the underwriters were not liable (*b*).

Where the assured states merely his own intention, expectation, information, or belief, in regard to a fact or event, the policy will not be avoided by reason of the mere untruth of the facts referred to, if the intention, expectation, or belief really existed in the mind of the assured, or the information alleged to have been received by him had in fact been so received (*c*).

Whether a representation be material or not to the risk, depends upon the surrounding circumstances, and must be decided by the jury upon the facts of the particular case (*d*). The materiality of a representation, as affecting the contract, does not, strictly speaking, depend upon its actual materiality as affecting the risk, but upon the influence produced by it upon the mind of the underwriter. Thus, on the one hand, a misrepresentation, however material to the estimation of the risk insured, will not vitiate the policy unless the underwriter accepted the insurance upon the faith of it (*e*); whilst on the other, a statement which has no real bearing upon the risk insured against, but which, nevertheless, influences the mind of

When material
to risk.

(*z*) In *Flinn v. Tobin, Moo. & Malk.* 367, Lord Tenterden appears to have drawn a distinction between a representation of a present fact and one which applied to future events. See, however, *Flinn v. Headlam*, 9 B. & C. 693.

(*a*) *Bowden v. Vaughan*, 10 East, 415.

(*b*) *Dennistoun v. Lillis*, 3 Bligh, 212;

see also *Chaurand v. Angerstein, Peake*, 44.

(*c*) *Barber v. Fletcher*, 1 Doug. 306; 1 Arnould on Ins. 558 (2nd edit.).

(*d*) See the judgment of Lord Ellenborough in *Bridges v. Hunter*, 1 M. & S. 19, and *Elton v. Larkins*, 8 Bing. 198.

(*e*) *Flinn v. Headlam*, *ubi supra*.

the underwriter, as, for instance, an assertion that previous insurances have been obtained on the same ship at a low premium, will, if untrue, avoid the policy (*f*).

CONCEALMENT.

What must be communicated.

The subject of *concealment* is closely connected with that of representation. A person about to insure is bound to communicate to the underwriter every fact within his knowledge which is either really material to the risk insured, or which is likely to affect the taking of the risk by the underwriter, or the amount of the premium to be required by him (*g*). And it must be recollected that in all cases of concealment the fact that the information is innocently withheld is unimportant, if it relate to a matter really material to the risk, or which would have affected the terms upon which the underwriter would have consented to insure had he known the truth (*h*).

It is the duty of the assured to communicate to the underwriter all the material information which he possesses relating to the ship or the voyage insured. For instance, if he knows or has heard a report as to the time when an overdue ship sailed (*i*), or if he has news that the ship has been lost or damaged (*k*), or that she has been seen in a leaky or dangerous condition (*l*), or that she was seen at sea without convoy (*m*), or in danger of capture (*n*), or that a vessel which sailed at the

(*f*) *Sibbald v. Hill*, 2 Dow, 263.

(*g*) *Cartier v. Boehm*, 3 Burr. 1905; *Shirley v. Wilkinson*, 1 Doug. 306, note; *Thompson v. Buchanan*, 4 Brown, P. C. 482; *Fitzherbert v. Mather*, 1 T. R. 12; *Russell v. Thornton*, 4 H. & N. 788; *S. C.*, Cam. Scacc., 6 H. & N. 140; *Holland v. Russell*, 1 B. & S. 424; and *Foley v. Tabor*, 2 F. & F. 663. In *Elton v. Larkins*, 5 C. & P. 392, Tindal, C. J., said, "A material concealment is a concealment of facts, which, if communicated to the party who underwrites, would induce him either to refuse the insurance altogether, or not to effect it except at a larger premium than the ordinary premium." This rule respecting concealment is peculiar to the contract of insurance, it is not applicable to the case of a guarantee. *Hamilton v. Watson*, 12 C. & F. 109; *The North British Insurance Company v. Lloyd*, 10 Ex. 523. It is applicable to life and fire policies as well as marine policies. *Bufe v. Turner*, 6 Taunt. 337; *Lindanus*

v. Desborough, 8 B. & C. 586.

(*h*) See the cases cited in the previous note.

(*i*) *Willes v. Glover*, 1 N. R. 14; *Bridges v. Hunter*, 1 M. & S. 15; *Webster v. Foster*, 1 Esp. 407; *Elton v. Larkins*, *ubi supra*; *Mackintosh v. Marshall*, 11 M. & W. 116; see also *Elkin v. Jansen*, 13 M. & W. 655. Where the ship is not overdue or missing, and there is no other circumstance which makes the time of her sailing material to the risk, it need not be communicated. See *Foley v. Moline*, 5 Taunt. 430; *Fort v. Lee*, 3 Taunt. 881; and *per Tindal*, C. J., in *Elton v. Larkins*, *ubi supra*.

(*k*) *Fitzherbert v. Mather*, *ubi supra*; *Gladstone v. King*, 1 M. & S. 35.

(*l*) *De Costa v. Scandret*, 2 P. Wms. 170; *Lynch v. Hamilton*, 3 Taunt. 37; *Lynch v. Dunsford*, 14 East, 494.

(*m*) *Savetell v. Loudon*, 5 Taunt. 359.

(*n*) *Durrell v. Bederley*, Holt, 283; *Beckwaite v. Nalgroove*, cited 3 Taunt. 41.

same time as, or subsequent to, the ship insured, has arrived before her (o), he must communicate each of these facts to the underwriter.

Where a vessel insured sailed from Elsinour for Hull, and six hours afterwards her owner followed in another ship, and met with rough weather, but when he reached Hull his vessel had not arrived, it was held that he was bound to communicate these facts to the underwriter (p). So, where two ships left Malaga for London about the same time, and when the owner of one of them insured her it was known at Lloyd's that the other ship had arrived three days before, but the insurer also knew that the vessels had met and parted company off Oporto in a gale of wind, and did not communicate this to the underwriters, it was held that this concealment avoided the policy (q).

A merchant resident at Sydney shipped goods for England on board a ship, and by another vessel, which sailed after her, wrote to an agent in England, and desired him, if he received the letter before the ship carrying the goods arrived, to wait for thirty days, in order to give her every chance of arrival, and then to effect an insurance on the goods. The agent, after waiting more than thirty days, employed a broker to effect the insurance, and handed to him the letter. The broker told the underwriters the date of the sailing of the ship that carried the goods, and also the date of the letter, but he did not mention when the letter was received, or the order to wait thirty days after the receipt of it, before effecting any insurance. Two vessels which had left Sydney after the ship which carried the letter, arrived in England shortly before the policy was effected. The Court expressed a strong opinion that a jury would be bound to hold that the letter was material, and, therefore, that the concealment of its contents avoided the policy. They also thought, that as the underwriter might naturally have supposed that the letter came by one of the two ships which had arrived shortly before the policy was made, the time when it was received was a material fact which should have been communicated to him (r).

The assured is not excused from communicating material

(o) *McAndrew v. Bell*, 1 Esp. 372.

(p) *Kirby v. Smith*, 1 B. & A. 672.

(q) *Westbury v. Aberdeen*, 2 M. & W.
267.

(r) *Richards v. Murdock*, 10 B. & C.
527. As to the reception of evidence
in this case, see *post*, p. 401.

information because he has received no regular or authentic advice, but only a doubtful account (*s*), or because his information is in the form of a general rumour merely (*t*); for the underwriter is entitled to the exercise of his own discretion as to the value of such reports.

What need not
be communi-
cated.

The assured is, however, only bound to communicate those facts which lie peculiarly within his knowledge. He is not bound to mention general topics of speculation, the knowledge of which may fairly be supposed to be common to both parties; thus, he is not bound to mention to the underwriter the causes natural or political which may render the voyage dangerous; such, for instance, as the probabilities of bad weather, the difficulties of the particular voyage, the chances of war, or the like; for with respect to matters of this kind, different men argue differently, and the means of information are open to both the contracting parties (*u*). So the underwriters are bound to know any general usage which affects the employment of ships in any particular trade (*x*); but not an usage which is not universal, but only occasional (*y*).

The assured is, moreover, not bound to inform the underwriter of facts which the latter may by inquiry and due diligence learn from the ordinary sources of information. Thus, where the shipping lists at Lloyd's were in the hands of the underwriters, it was held that the assured was not bound to disclose to them material facts mentioned in those lists (*z*). But the same effect is not given to the *Foreign List* at Lloyd's, which is hung up only in the inner room (*a*). Nor is the assured bound to inform the underwriters of all the bygone calamities which the ship may have met with, if these earlier matters do not affect her then condition (*b*). And it is a general rule that

(*s*) *De Costa v. Scandret*, 2 P. Wms. 170.

(*t*) *Durrell v. Bederley*, Holt, 283; *Lynch v. Hamilton*, 3 Taunt. 37.

(*u*) See the judgment of Lord Mansfield in *Carter v. Boehm*, 3 Burr. 1910; see also *Planché v. Fletcher*, 1 Doug. 251.

(*x*) *Vallance v. Dewar*, 1 Camp. 503; *Ougier v. Jennings*, *ib.* 505, note; *Kingston v. Knibbs*, *ib.* 508, note; *Moxon v. Atkins*, 3 Camp. 200; *Da Costa v. Edmunds*, 4 Camp. 142; *Stewart v. Bell*, 5 B. & A. 238; see also the cases cited

ante, p. 342.

(*y*) *Tennant v. Henderson*, 1 Dow, 324.

(*z*) *Friere v. Woodhouse*, Holt, 572. Where, however, the assured is guilty of a misrepresentation or concealment inconsistent with the lists, he cannot excuse himself by reason of the presumed knowledge of the underwriter. *Mackintosh v. Marshall*, 11 M. & W. 116.

(*a*) *Elton v. Larkins*, 5 C. & P. 85; 8 Bing. 198.

(*b*) *Fresland v. Glover*, 6 Esp. 14; 7

the assured is only bound to communicate facts. He is not bound to disclose to the underwriter any information he may have received as to the sensations or apprehensions produced in the minds of others by those facts (c).

The assured is supposed to know facts which are known to his agent. If, therefore, material facts are concealed by the agent from the shipowner, and by him innocently and necessarily not communicated to the underwriter, the policy is still avoided (d). Concealment by agent.

The materiality of the fact concealed depends, as in cases of misrepresentation (e), upon the effect it is calculated to produce on the mind of the underwriter. If, therefore, the information withheld would have induced the underwriter to decline the insurance or to charge a higher premium, its concealment is fatal to the policy, although it may afterwards appear that it was untrue; or the loss may arise from a cause totally distinct from the subject-matter of the concealment. Thus, where the assured failed to communicate to the underwriter the intelligence which he had received, that his ship had been seen deep laden and leaky, the concealment was held to vitiate the insurance, although the news was false, and the loss arose not from the supposed perils, but from a capture (f). The question, in cases of concealment, always is, whether, looking at all the circumstances at the time the policy was underwritten, there was a fair representation, or a concealment either fraudulent, that is designed, or though not designed, varying materially the object of the policy, and changing the risk *understood* to be run (g). Materiality how judged of.

The question whether, in actions on policies, brokers or other skilled witnesses can be called to speak to the materiality of any information which is withheld by the assured, has given rise to considerable discussion and to much difference of opinion. In How far the opinion of underwriters is evidence.

East, 457. In this case a letter had been shown to the underwriters which referred to, although it did not mention the contents of, the earlier letter, which it was contended ought to have been communicated; and the Court observed, that the underwriters might have asked to see the earlier letter if they had thought it material.

(c) *Bell v. Bell*, 2 Camp. 475.

(d) *Fitzherbert v. Mather*, 1 T. R. 12; *Gladstone v. King*, 1 M. & S. 35; *Anderson v. Thornton*, 8 Ex. 425.

(e) *Ante*, p. 398.

(f) *Lynch v. Hamilton*, 3 Taunt. 37; see also *Lynch v. Dunsford*, 14 East, 494; *Seaman v. Fonereau*, 2 Str. 1188.

(g) See the judgment of Lord Mansfield in *Carter v. Boehm*, 3 Burr. 1911.

some cases such evidence has been admitted upon the same principle as that upon which the testimony of persons skilled in particular sciences, or conversant with the practice of particular trades, is receivable (*h*); in others it has been rejected, upon the ground that the question is one of opinion merely, and not of scientific knowledge, and that to admit such evidence would be to place the witnesses in the position of the jury (*i*).

Probably the true rule is, that the admissibility of such evidence depends upon the facts of each particular case; and that where the opinion of the witness is tendered upon a subject which requires peculiar study or experience, in order to be acquainted with it, the evidence should be received; but that where the opinion is offered upon a matter of general knowledge, as to which the jury are equally competent to form a judgment, as, for instance, upon the question whether it was a material fact, that a vessel which had sailed long after the ship insured had arrived in England before the policy was effected (*k*), or when it relates to facts in respect of which no aid can be obtained by previous experience, so that the opinion of the witness, if rightly formed, can be drawn only from the same premises upon which the Court and jury have to determine the cause (*l*), the evidence should be rejected (*m*).

**LOSSES AND
THEIR INCI-
DENTS.**
Losses total or
partial.

The losses which arise from the various perils insured against may be either *total* or *partial*; they are *total* when the subject-matter of the insurance is wholly destroyed, or injured to such an extent as to justify the owner in abandoning to the insurer, and *partial* when the thing insured is only partially damaged, or where, in the case of an insurance on goods, the owner of them is called upon to contribute to a general average (*n*).

**Different kinds
of total losses.**

Total losses may again be divided into actual and construc-

(*h*) *Berthon v. Loughman*, 2 Stark. 258; *Chaurand v. Angerstein*, Peake, 43; *Littledale v. Dixon*, 1 N. R. 151; *Hayward v. Rodgers*, 4 East, 590; *Rickards v. Murdock*, 10 B. & C. 527; *Chapman v. Walton*, 10 Bing. 57. This is the view which appears to have been adopted in America. See Duer on Ins., Lect. 14, ss. 26 and 27, and the judgment of Story, J., in *McLanahan v. The Universal Insurance Company*, 1 Peters (American) Rep. 188; see also 1 Ar-

nould on Ins. 620 (2nd edit.).

(*i*) *Carter v. Boehm*, 3 Burr. 1905; *Durrell v. Bederley*, Holt, 283; *Campbell v. Rickards*, 5 B. & Ad. 840. See also Phillips on Ins. c. 28, s. 8.

(*k*) As in *Campbell v. Rickards*, *ubi supra*.

(*l*) As in *Carter v. Boehm*, *ubi supra*.

(*m*) See the notes to *Carter v. Boehm*, in 1 Smith's L. C. 486 (5th edit.), and Duer on Ins., Lect. 14, note 10.

(*n*) See *ante*, p. 319.

tive total losses. Actual total losses arise where the ship or cargo is totally destroyed or annihilated, or where they are placed by any of the perils insured against in such a position that it is wholly out of the power of the assured to procure their arrival (*o*). Actual total losses.

Thus, where by means of a peril insured against, a ship founders at sea, or is actually destroyed, or even where she is so much injured that she ceases to retain the character of a ship, and becomes a wreck, or a mere congeries of planks, the loss is total and actual, although the form of a ship may still remain; and in these cases the assured may recover for a total loss without abandonment (*p*).

So, goods are considered as actually lost if they are wholly lost to the owners by plunder and sale, capture or the like (*q*); or if they are so much injured by sea damage that they have lost their specific character; as, for instance, where they exist only as a nuisance, so that it is necessary to throw them overboard (*r*); or even, if by reason of such injury having commenced, it becomes certain that they could never have reached their destination unchanged in specific character, and it is consequently necessary to sell them at an intermediate port. Thus, where a cargo of hides was found to be so much damaged by the sea-water which had penetrated through a leak into the

(*o*) See *per* Lord Abinger in *Roux v. Salvador*, 3 B. N. C. 286.

(*p*) *Cambridge v. Anderton*, 2 B. & C. 691. See also *Read v. Bonham*, 3 B. & B. 147; *Green v. Royal Exchange Assurance Company*, 6 Taunt. 68; *Idle v. Royal Exchange Assurance Company*, 8 Taunt. 755; *Robertson v. Clarke*, 1 Bing. 445; and the judgment of Maule, J., in *Moss v. Smith*, 9 C. B. 102; *Fleming v. Smith*, 1 H. of L. C. 513; and *Philpott v. Swann*, 11 C. B., N.S. 270. In *Cambridge v. Anderton*, the ship, after she was sold by the master, was actually got off the rocks and repaired by the purchaser; but the Court appears to have decided the case on the supposition that she was a mere wreck; and, moreover, no abandonment was possible, the intelligence of the loss and of the sale having reached the owners at the same time. See the judgments of Lord Campbell in *Fleming v. Smith*, and in *Knight v. Faith*, 15 Q. B. 663.

(*q*) *Mullett v. Shedden*, 13 East, 304; *Mellish v. Andrews*, 15 East, 13; *Bon-*

drett v. Hentigs, Holt, 149.

(*r*) *Dyson v. Rowcroft*, 3 B. & P. 474; *Cologan v. London Assurance Company*, 5 M. & S. 447; *Navone v. Haddon*, 9 C. B. 30; see also the judgment of Lord Kenyon in *Burnett v. Kensington*, 7 T. R. 222. An early case, *Cocking v. Fraser*, 4 Doug. 295, & C., 1 Park on Ins. 181, is to some extent inconsistent with these decisions, and Lord Mansfield is supposed to have laid down the rule in it, that there must be an absolute destruction of the goods in order to constitute a total loss. It is, however, to be observed, that in this case the goods actually arrived at the end of the voyage without change of specific character; the fish actually came to port as fish, although it was putrid. The American Courts act more strictly than our Courts do upon the rule that there must, in order to constitute an actual total loss, be a destruction of the thing insured. See 3 Kent Comm. 296, and the cases cited, 2 Phillips on Ins. 483, 488.

ship's hold that it would have been impossible to carry them to their destination in the form of hides, as they must, by the progress of putrefaction, have lost this character before their arrival, and they were consequently sold at an intermediate port for a fourth of their value, it was held that the loss was an actual and not merely a constructive total loss, and consequently that the assured might recover without abandonment (*s*). The Court also laid down the following general propositions:—If goods once damaged by the perils of the sea, and necessarily landed before the termination of the voyage, are, by reason of that damage, in such a state, though the species be not utterly destroyed, that they cannot with safety be re-shipped into the same or any other vessel; or if it be certain that, before the termination of the original voyage, the species itself would disappear, and the goods assume a new form, losing all their original character; or, if the goods, although imperishable, are in the hands of strangers not under the control of the assured; or if by any circumstance over which he has no control they can never, or within no assignable period, be brought to their original destination; in all these cases, the circumstance of their existing in specie at that forced termination of the risk is of no importance. The loss is, in its nature, total to him who has no means of recovering his goods, whether his inability arises from their annihilation or from any insuperable obstacle (*t*).

But if the ship, although materially damaged, has not ceased to be a ship (*u*), or if the goods, although greatly deteriorated in value, still retain their original character (*x*), the assured must abandon.

**Constructive
total losses.**

Losses are constructively total when the subject-matter of the insurance, although still in existence, is either actually lost to the owners, or beneficially lost to them, and notice of abandonment has been given to the underwriters (*y*).

Thus, where the ship, although existing as a ship, is captured

(*s*) *Roux v. Salvador*, 3 B. N. C. 266, in Cam. Scacc., overruling the decision of the Common Pleas in the same case, 1 B. N. C. 526; see also the judgment of Lord Ellenborough in *Hunt v. The Royal Exchange Assurance Company*, 5 M. & S. 55.

(*t*) See the judgment in *Roux v. Salvador*, 3 B. N. C. 266.

(*u*) *Martin v. Crockatt*, 14 East, 465;

Bell v. Nixon, Holt, 423; *Knight v. Faith*, 15 Q. B. 649. See also *Tunno v. Edwards*, 12 East, 488.

(*x*) *Anderson v. The Royal Exchange Assurance Company*, 7 East, 38; *Thompson v. The Royal Exchange Assurance Company*, 16 East, 214.

(*y*) See the cases cited in the next page.

or laid under an embargo, and has not been re-captured or restored before action brought, so that she is lost to the owners (z), or where she is so damaged by a peril insured against as to be innavigable, and is so situated that either she cannot be repaired at the place which she is (a), or cannot be repaired without incurring an expense greater than her value when repaired (b), the assured may abandon and treat the loss as total. And if a ship be so damaged during the voyage covered by the policy, the assured may abandon; although she afterwards complete her voyage, discharge cargo and earn freight (c).

A policy which is expressed to be confined to "total loss only," does not exclude a constructive total loss (d).

In considering the relation which the cost of repair would bear to the value of the ship when repaired, the question is not varied by the age of the vessel; if by reason of her natural decay more extensive repairs would be necessary to repair the injuries caused by the perils insured against, and from this cause the expenses would exceed the value of the ship when repaired, the assured may still abandon (e).

In estimating the value of the ship when repaired her mere market value is not the proper test, but her value to her owners. Where a vessel is of exceptional size or class, and built for any special service, this distinction becomes very material. Thus, where in a special case it was found that a ship had originally been bought for 20,000*l.*, that 20 per cent. would be a reasonable deduction in respect of wear and tear at the time when the policy attached; that the cost of building such a ship at that time would have been 20,000*l.*, and the cost of repairing her would have been 10,500*l.*, and that her value after she had been repaired would have been 7,500*l.* as she was a vessel of exceptional size and class, but that an owner wanting such a ship for the particular purposes of his trade, and having to elect either

(z) See the judgment of Lord Mansfield in *Goss v. Withers*, 2 Burr. 694, 696; *Hamilton v. Mendes*, *ib.* 1198; and the judgment in *Roux v. Salvador*, 3 B. N. C. 266.

(a) See the ruling of Tindal, C. J., in *Somes v. Sugrue*, 4 C. & P. 283. See also *Read v. Bonham*, 3 B. & B. 147.

(b) *Allen v. Sugrue*, 8 B. & C. 561; and the cases cited in the next page.

(c) *Stewart v. The Greenock Marine Insurance Company*, 2 H. of L. Cases,

159; *S. C.*, 1 Macqueen, 328; *Scottish Marine Insurance Company v. Turner*, *ib.* 334. Freight earned after the abandonment belongs to the underwriter, *ib.*; *Barclay v. Stirling*, 5 M. & S. 6.

(d) *Adams v. Mackenzie*, 13 C. B., N. S. 442.

(e) *Phillips v. Nairne*, 4 C. B. 343; see also *Hyde v. The Louisiana State Insurance Company*, 3 Mason (American) Rep. 27.

to sell, or to repair, or to purchase, would have elected to repair her, for such a vessel could not have been built or purchased at that time for so small a sum as 10,500*l.*; it was held that the inference from these facts was, that the cost of repairs would not have exceeded the value of the ship when repaired, and therefore that the loss was an average loss only, and not a constructive total loss (*f*).

A ship insured by a time policy was captured by pirates and re-taken as prize and taken into port by a Queen's ship. The assured, on learning these facts, gave notice of abandonment after the expiration of the policy, but within a reasonable time. The ship was sent home for adjudication, but on her voyage, meeting with bad weather, she was taken into port and sold by the prize master who had charge of her. It was held, under these circumstances, that the notice of abandonment was sufficiently early, and that the assured were entitled to recover for a total loss (*g*).

In like manner, if the goods, although they exist in specie, are prevented by embargo, capture, or the like, from reaching their port of destination, so that the voyage is not merely retarded, but its objects are entirely lost (*h*), or if, owing to an injury to the vessel, and there being no other means of transport, they cannot be forwarded at all (*i*), or if they are so damaged by a peril insured against that if sent on they would be worth nothing, or less than the expense which must necessarily be incurred in forwarding them, the assured may, by abandoning, treat the loss as constructively total (*k*). So, where advances made for the transport of Chinese emigrants upon a particular voyage were insured, and the emigrants piratically ran away with the ship, and, landing, deserted her before the voyage was ended, this was held to amount to a total loss of the sums insured (*l*).

If, however, the ship, although once captured, is re-taken or

(*f*) *Grainger v. Martin*, 2 B. & S. 456.

(*g*) *Dean v. Hornby*, 3 E. & B. 180. See also *Lozano v. Janson*, 2 E. & E. 160.

(*h*) *Barker v. Blakes*, 9 East, 283; *Cologan v. The London Assurance Company*, 5 M. & S. 447; *Lozano v. Janson*, 2 E. & E. 160.

(*i*) *Anderson v. The Royal Exchange*

Assurance Company, 7 East, 38; *Wilson v. The Royal Exchange Assurance Company*, 2 Camp. 623.

(*k*) *Gernon v. The Royal Exchange Assurance Company*, 6 Taunt. 383; *Parry v. Aberdeen*, 9 B. & C. 411; *Navone v. Haddon*, 9 C. B. 30; *Rosetto v. Gurney*, 11 ib. 176.

(*l*) *Naylor v. Palmer*, 8 Ex. 739; *S. C.*, Cam. Scacc., 10 Ex. 382.

restored before action brought (*m*), or, if in cases of salvage, the owners could by payment of such a sum of money as it is in their power to procure, obtain possession of her (*n*), or if the ship, although much injured by a peril insured against, can practically be repaired, that is, can be repaired without incurring a greater expense than she would be worth when repaired, the assured is not entitled to abandon (*o*). So, if the goods are recaptured and arrive at their destination (*p*), or if the whole or any part of the cargo, although damaged, exists in specie, and can be sent to its destination in a marketable state without incurring more expense than it would be worth on its arrival there, the loss is only partial (*q*). The mere loss of the voyage is never sufficient to create a constructive total loss on the ship (*r*). And, with respect to goods, the temporary detention of the ship, or the retardation of the voyage, so as to lose a season, or even the loss of the voyage, if the goods are not of such a perishable nature as to make the loss of the voyage a loss of the commodity itself, will not constitute a constructive total loss (*s*).

The ordinary test by which to decide whether the loss of the ship is constructively total or partial only, is whether a prudent uninsured owner, if on the spot, would have incurred the expense of repairing. If he would not, the loss is constructively total (*t*). This test is, however, inapplicable in some cases of

(*m*) See the judgments in *Goss v. Withers*, 2 Burr. 694, and in *Hamilton v. Mendes*, *ib.* 1211; *Bainbridge v. Neilson*, 10 East, 329; *Falkner v. Ritchie*, 2 M. & S. 290; *Brotherston v. Barber*, 5 M. & S. 418. If the ship is restored after abandonment in such a condition that the owners cannot reasonably be expected to take her back, as where, for instance, she is offered to them charged with expenses of salvage and repairs equalling or exceeding her value, this will not have the effect of making the loss merely partial. See the judgment of Bayley, J., in *Holdsworth v. Wise*, 7 B. & C. 799, and of the Court in *Lozano v. Janson*, 2 E. & E. 176. If once there has been a total loss by capture, that is construed to be a permanent total loss, unless something occurs afterwards by which the assured either has the possession restored or has the means of obtaining such restoration. *Per* Lord Campbell, C. J., in *Dean v. Hornby*, 3 E. & B. 190.

(*n*) *Thornely v. Hebson*, 2 B. & A. 513.

(*o*) *Doyle v. Dallas*, M. & Rob. 48; *Gardner v. Salvador*, *ib.* 116; and see *Chapman v. Benson*, 5 C. B. 330.

(*p*) *Patterson v. Ritchie*, 4 M. & S. 393.

(*q*) *Thompson v. The Royal Exchange Assurance Company*, 16 East, 214; *Davy v. Milford*, 15 East, 559; *Wilson v. The Royal Exchange Assurance Company*, 2 Camp. 623; *Navone v. Haddon*, 9 C. B. 80; *Rosetto v. Gurney*, 11 C. B. 176, and *Michael v. Gillespie*, 2 C. B., N. S. 627.

(*r*) *Pole v. Fitzgerald*, Willes, 641; *S. C.*, before the House of Lords, 3 Brown's P. C. 131; *Parsons v. Scott*, 2 Taunt. 363.

(*s*) *Anderson v. Wallis*, 2 M. & S. 240; *Hunt v. The Royal Exchange Assurance Company*, 5 M. & S. 47.

(*t*) *Roux v. Salvador*, 3 B. N. C. 266; *Manning v. Irving*, 1 C. B. 168; 2 C. B. 784; 6 C. B. 391; *Moss v. Smith*, 9 C. B. 94; *Somes v. Sugrue*, 4 C. & P. 276;

damage to goods; for instance, where a cargo meets with sea damage, and the master is obliged to put into an intermediate port, it may well happen that considering the state of the market there, and the expense of taking on the cargo, an immediate sale would be more beneficial to the owner of the goods than a prosecution of the voyage; yet if the goods could be carried to their destination, in such a condition, that allowing for all the necessary extra expenses caused by the damage, they could be sold there at any profit, the loss is not total (*u*).

The extra expenses which may in these cases be taken into calculation are, the costs of unshipping, warehousing, drying, and of transhipping, where any of these operations are in fact necessary, and any salvage which is payable may also be reckoned; but a sum payable to persons who have in the emergency advanced money on a bottomry bond, cannot be taken into the account (*v*).

The question whether the master acted rightly in selling the vessel or cargo, is often incidentally material in considering whether there has been a constructive total loss. It is, however, only incidentally so, for the sale does not constitute the loss; the loss is the antecedent damage to the ship or cargo which renders the sale justifiable; there is no such loss known in insurance law as a sale by the master, unless it be barratrous (*w*).

Domett v. Young, 1 Car. & M. 465. Freight is not totally lost by perils of the sea, simply because the cost of the repairs of sea damage necessary to earn it would be greater than the freight. *Moss v. Smith*, 9 C. B. 94, and *Philpott v. Swann*, 11 C. B., N. S. 270.

(*u*) *Reimer v. Ringrose*, 6 Ex. 263. In this case the Court appears to have considered that the expense of forwarding the cargo, whether there is a transshipment or not, is an extra expense, which should be estimated in considering whether the loss was total or partial only. The Court of Common Pleas, however, in *Rosetto v. Gurney*, 11 C. B. 176, pointed out the error of this view, saying: "If the voyage is completed in the original ship, it is completed upon the original contract, and no additional freight is incurred. If the master transships because the original ship is damaged (without considering whether he is bound to tranship or merely at liberty to do so), it is clear that he transships to earn his full freight; and so the delivery takes place upon the original con-

tract. It may happen that a new bottom can only be obtained at a freight higher than the original rate of freight. In our opinion, to this extent, and to this extent only, the cost of transit should be taken into consideration in ascertaining the practicability of delivering the cargo, or part of it, in a marketable state at the port of discharge." This would appear to be the true rule, and to be in accordance with the principles laid down in *Duncan v. Benson*, 1 Ex. 637; 3 Ex. 644; and *Benson v. Chapman*, 8 C. B. 950. As to the expense of forwarding a cargo where by the policy it is warranted "free from average unless general," see *The Great Indian Peninsular Railway Company v. Saunders*, 1 B. & S. 41; *S. C.*, in Cam. Scacc., 2 B. & S. 266; *Booth v. Gair*, 15 C. B., N. S. 291, and *ante*, p. 325.

(*v*) See the cases cited in the last note.

(*w*) See the judgment in *Knight v. Faith*, 15 Q. B. 669; and the observation of Bayley, B., in *Gardner v. Salvador*, 1 M. & Rob. 117. Where the right

In ascertaining whether a loss is total or not, the same test is applicable to valued as to open policies; notwithstanding that the effect of this rule is, to allow the assured, in some cases, to recover more than a compensation for his loss. It is now well settled that the valuation in the policy cannot be looked to in order to determine whether a loss is total or not, the object of the valuation being to prevent disputes by ascertaining the sum which the underwriter is to pay in case a total loss is proved, and not to fix a conventional value at which the vessel is to be put in considering the propriety of repairing. The question, therefore, in these cases, is to be determined as if there were no policy at all, by inquiring what a prudent man uninsured would have done (*x*). Thus, where a ship, worth to be sold in the market 9,000*l.* only when the policy was effected and when the damage was sustained, but valued in the policy at 17,500*l.*, was so injured during her voyage that she could not proceed without an expenditure of 10,500*l.*, and when repaired she would have been worth only 9,000*l.*, and the jury found that a prudent owner uninsured would not have repaired, it was held that this was a case of constructive total loss, and also that the assured were entitled to recover the value mentioned in the policy (*y*).

Where policy
is valued.

With respect to insurances on freight. The assured cannot recover unless the loss takes place upon the voyage insured (*z*). It is obvious, also, that no loss can be sustained or abandonment made in respect of freight actually earned; the question of loss, therefore, can only arise in cases of pending or current freight (*a*). If the ship is injured and obliged to put back to repair or meets with an irreparable injury, so as to be unable to proceed with her cargo, or is stranded and cannot be got off without incurring a ruinous expense, the loss of freight is total,

Losses of
freight.

of an owner to abandon was resisted on the ground that if a good judgment had been exercised when the ship struck, a total loss might have been avoided, it was held, that evidence was admissible to show that the captain was, previously to the voyage insured against, an habitual drunkard. *Alcock v. Royal Exchange Assurance Company*, 13 Q. B. 292.

(*x*) *Allen v. Sugrue*, 8 B. & C. 561; *Young v. Turing*, 2 S. N. R. 752; *Man-*

ning v. Irving, 1 C. B. 168; *S. C.* in error, 2 C. B. 784; 6 C. B. 391.

(*y*) *Manning v. Irving*, *ubi supra*.

(*z*) *Sellar v. M'Vicar*, 1 N. R. 23.

(*a*) The amount recoverable in respect of a loss on freight will therefore depend on the terms of the charter-party. See *Atty v. Lindo*, 1 N. R. 236; *Wilson v. Forster*, 6 Taunt. 25; *Everth v. Smith*, 2 M. & S. 278. As to what is an insurable interest in freight, see *ante*, p. 349.

and the assured may recover without abandonment (*b*). But if the goods could be forwarded by another vessel (*c*), or if the ship could be repaired at a cost less than her value when repaired, although it may exceed the value of the freight, so as to bring home the cargo or any part of it, the loss of the freight is not total (*d*). Freight may be insured by a time policy, though for a period short of the time necessary to complete the voyage on which the freight is to be earned; and there is a total loss of freight if the cargo be so damaged by a sea-peril in the course of the voyage as to render it impossible, except at an expense which would greatly exceed its value on arrival, to carry it to its port of destination (*e*).

In a modern case (*f*) which arose on a policy on freight, the ship having met with serious injury by striking on a rock was compelled to put back and unship her cargo. The master repaired her, borrowing money for the purpose on bottomry at an expense which ultimately exceeded the value of both ship and freight, and having re-shipped the cargo, the vessel proceeded and performed her voyage, and earned freight which was paid to the obligees of the bottomry bond. Before her arrival, however, the owners on receiving intelligence of the damage, and of the probable expense of the repairs, had abandoned both ship and freight to the underwriters. The jury having found that all parties had acted *bonâ fide*, and that the owner of the ship had acted as a prudent owner of ship and freight, if uninsured, would have acted, it was held that the assured could not recover for either a total or partial loss of freight, as he was bound by the act of his master in repairing, and the freight had not been lost, but, on the contrary, had been actually earned, and paid, in effect, to the assured by its payment to the holders of the bottomry bond.

Where a policy was on "money advanced on account of freight," subject to the ordinary memorandum, and the action

(*b*) *Green v. The Royal Exchange Assurance Company*, 6 Taunt. 68; *Idle v. The Royal Exchange Assurance Company*, 8 Taunt. 755; *Mount v. Harrison*, 4 Bing. 388.

(*c*) *Parmeter v. Todhunter*, 1 Camp. 541.

(*d*) *Moss v. Smith*, 9 C. B. 94, and *Philpott v. Swann*, 11 C. B., N. S. 270; see also *Green v. The Royal Exchange Assurance Company*, *ubi supra*, and *Mordy*

v. Jones, 4 B. & C. 394.

(*e*) *Michael v. Gillespy*, 2 C. B., N. S. 627.

(*f*) *Benson v. Chapman*, 8 C. B. 950. The Court held in this case that it could not assume from the fact of the expenses ultimately exceeding the value of the ship, that the master had, in repairing, acted beyond the scope of his authority, or that the owner, if on the spot, would not have elected to repair.

was brought in respect of a general average loss, it was held that a plea alleging that by a custom in London the insurers were not bound to make good general average losses on such a policy was bad upon demurrer, such a custom being inconsistent with the terms of the policy, and therefore inadmissible (*g*).

Where passage money was insured against all costs, charges, and liabilities to which the owner or charterer might be subject under certain sections of the Passengers' Act, 1852 (15 & 16 Vict. c. 44), and the ship was lost but the passengers were saved in a British colony short of their destination, to which, however, the master within six weeks forwarded them; it was held that the expenses so incurred might be recovered under the policy, for one of the sections referred to made it the duty of the master to forward the passengers at the expense of the owners under the circumstances which had occurred (*h*). It was held to be otherwise, however, where the expenses were incurred in respect of the maintenance of passengers during the repairs of the ship on the voyage, the policy not referring to the sections of the statute which threw this expense on the shipowners (*i*).

Of passage money.

Whether the underwriter is liable for a loss which happens after the period covered by the policy, through an injury sustained during that period, is a question which has been much discussed. It has been argued that the underwriters are not liable, in these cases, for a total loss, because none happens during the period for which the vessel was insured; nor for a partial loss, because the actual damage incurred within that period must be taken to be merged in the subsequent total loss. In an early case (*k*), where a ship, three days before the expiration of a time policy, received her death's wound, but, by pumping, was kept afloat till three days after the time, the insurer was held not liable. In a later case (*l*), it was held that the assured were entitled to recover upon a voyage policy for a total loss which occurred after, but arose from an injury received before, the determination of the voyage; but, in this case, the

Losses after period insured owing to previous injury.

(*g*) *Hall v. Jansen*, 4 E. & B. 500.

(*h*) *Gibson v. Bradford*, 4 E. & B. 586.

(*i*) *Willis v. Cooke*, 5 E. & B. 641.

(*k*) *Meretony v. Dunlope*, cited by

Willes, C. J., in *Lockyer v. Offley*, 1 T. R. 260.

(*l*) *Shaw v. Felton*, 2 East, 109.

policy included, in terms, the vessel's stay at the port where she was actually lost.

The earlier of these cases has been supposed to lay down the rule, that where a ship, insured under a time policy, receives damage during the period insured, which ultimately causes her loss, but she is kept afloat, as a ship, until after that period, the underwriter cannot be charged with either a total or a partial loss, and the decision has, on this supposition, been censured by foreign jurists (*m*). But it may well be doubted whether any such doctrine was intended to be asserted in that case; and in a modern case (*n*), where a ship received her death-blow before the expiration of a time policy, but the extent of the damage was not discovered until after it had expired, when it was found that she could not be prudently repaired, and she was in consequence sold, it was held that the underwriters were liable for the partial loss which had occurred before the expiration of the time limited in the policy.

It is clear, however, that if a total loss follows after a partial loss, but arises from an independent cause, excepted in the policy, so that the assured is not in any degree in a worse position by reason of the partial loss, the underwriters are not liable for the partial loss. Thus, where a ship insured from New York to London warranted free from American condemnation, was driven on shore by the wind and tide and suffered a partial loss by sea damage, and whilst on shore was seized and condemned by the American Government, it was held that the underwriters were not liable, either for a total or for a partial loss; not for a total loss, as, according to the maxim *causa proxima non remota spectatur*, the loss must be attributed to the capture; nor for a partial loss, because although the damage made the ship of less value to the American Government, the assured was not injured, being in no worse situation than if it had not occurred (*o*).

(*m*) Benecké Princ. of Indemn. c. 8, s. 3; Phillips on Ins. c. 13, s. 14; 3 Kent Comm. 308, note.

(*n*) *Knight v. Faith*, 15 Q. B. 649. It was unnecessary in this case to decide whether the underwriters were liable for a constructive total loss as the vessel had not been abandoned; and the underwriters not being therefore liable to pay for the final loss of the ship, even

assuming it to have been a total loss resulting from the damage incurred during the currency of the policy, the partial loss could not merge; but the Court disapproved of the doctrine supposed to have been acted on in *Meretony v. Dunlops* (cited 1 T. R. 260); see 15 Q. B. 667.

(*o*) *Livie v. Jansen*, 12 East, 648. See also the remarks upon this case in the

It will be observed that there may be cases of *prima facie* total loss, which may in the result appear to be partial losses only; as where there is a capture and recapture, or where a forcible detention, instead of lasting so long as to render it impossible to bring the ship or goods to their destination, terminates speedily (*p*). And it must be recollected that whether a loss is partial or constructively total, depends always upon the facts as they appear, not at the time of abandonment (*q*), but at the time of action brought. If, therefore, that which was supposed to be a total loss at the time of the notice of abandonment is only a partial loss at the time of action brought, as, where a ship is captured, and after abandonment and before action recaptured, the assured cannot recover as for a total loss. In order, however, to divest the right of the assured under the abandonment, the thing insured must be offered or returned to them, or must arrive at its destination under such circumstances that they may, if they please, have possession of it, and may be reasonably expected to take it (*r*).

We have already seen that it is always necessary, in order to make a loss constructively total, that the assured should abandon (*s*). This is a reasonable and equitable rule, not re- Abandonment and its effects.

judgment of the Court in *Knight v. Faith*, 15 Q. B. 668, and *Naylor v. Palmer*, 8 Ex. 739; 10 Ex. 382.

(*p*) See the cases cited in the present page, *Dean v. Hornby*, 3 E. & B. 180, and the judgment in *Roux v. Salvador*, 3 Bing. N. C. 286.

(*q*) See the judgment of Lord Mansfield in *Hamilton v. Mendes*, 2 Burr. 1210; *Bainbridge v. Neilson*, 10 East, 329; *Falkner v. Ritchie*, 2 M. & S. 290; *Parsons v. Scott*, 2 Taunt. 363; *Brotherston v. Barber*, 5 M. & S. 418; *Naylor v. Taylor*, 9 B. & C. 718. The correctness of this rule was doubted by Lord Eldon in *Smith v. Robertson*, 2 Dow, 474, but it is now clearly established. The law in France and America is otherwise. Emerigon *Traité des Ass.* tom. 2, 195. By the Code de Commerce, Art. 385, "Le délaissement signifié et accepté ou jugé valable, les effets assurés appartiennent à l'assureur, à partir de l'époque du délaissement. L'assureur ne peut, sous prétexte du retour du navire, se dispenser de payer la somme assurée." See also 3 Kent Comm. 324, and *Poele v. Merchants' Insurance Company*, 3 Masou (American)

Rep. 27, where Story, J., says: "An abandonment once rightfully made is binding and conclusive between the parties, and the rights flowing from it become vested rights, and are not to be divested by any subsequent events."

(*r*) See *M'Iver v. Henderson*, 4 M. & S. 576, where it was held that the assured were not bound by the mere restitution of the ship's hull under conditions which made it doubtful whether they would not have to pay more than it was worth. See also *Holdsworth v. Wise*, 7 B. & C. 794; *Parry v. Aberdeen*, 9 B. & C. 411; *Lozano v. Janson*, 2 E. & E. 160. In the latter case the Court adopted the rule laid down by Bayley, J., in *Holdsworth v. Wise*, *ubi supra*, that, to reduce a loss once total to a partial loss, the subject of the insurance "must be in existence under such circumstances that the assured may, if they please, have possession, and may reasonably be expected to take possession of it."

(*s*) *Ante*, p. 404; *Knight v. Faith*, 15 Q. B. 648; *Stewart v. The Greenock Marine Insurance Company*, 2 H. of L. C. 159.

sulting from any express stipulation in the contract of insurance, but annexed to it by the law merchant; for, on the one hand, long interruption to a voyage, and uncertain hopes of recovery, being, in mercantile transactions, often ruinous, it is reasonable that the assured should be allowed to disentangle himself from unprofitable trouble and further expense by treating the injury sustained by the insured property as amounting to a total loss; and, on the other, it is required by the very principle of a contract of indemnity, that the thing insured should, if it still exist, be ceded to the underwriters, and that they should have an early opportunity of inquiring into the facts, and of protecting themselves against fraud (*t*). The assured is not, indeed, in any case *obliged* to abandon; nor will the want of an abandonment oust him of his claim for an average or an actual total loss, as the case may be (*u*). But if he fail to abandon when the loss is only constructively total, he is entitled to indemnity as for a partial loss only (*v*). On the other hand, the assured cannot by abandoning, without the consent of the underwriter, treat as a constructive total loss that which is clearly a mere average or partial loss (*x*).

Notice of abandonment, to be valid, must be given by the real owners of the ship or goods insured. One with whom a policy of insurance has been deposited as a security for a loan has no implied authority to give notice of abandonment. A notice, therefore, given by him without the express authority of the owner, will be of no avail to the latter (*y*).

An abandonment must be total and not partial; that is, one part of the property insured may not be retained whilst the rest is abandoned (*z*). The mode in which an abandonment is usually made, is by a notice from the assured to the underwriter, which is called a notice of abandonment. This notice, although usually in writing, is not necessarily so (*a*). It must be express and direct in its terms (*b*); a communication of intelligence

(*t*) See the judgments in *Goss v. Withers*, 2 Burr. 697; *Hamilton v. Mendes*, *ib.* 1209; and in *Rouz v. Salvador*, 3 B. N. C. 275, and 3 Kent Comm. 318.

(*u*) See *Mellish v. Andrews*, 15 East, 13.

(*v*) *Knight v. Faith*, 15 Q. B. 649.

(*z*) See the cases cited above, and *Cazalet v. St. Barbe*, 1 T. R. 187.

(*y*) *Jardine v. Leathley*, 32 L. J., Q. B. 132. See also *Arnould on Ins.* 1161, and *Gordon v. Massachusetts Fire and Marine Insurance Company*, 2 Pickering's Rep. (Amer.) 249.

(*s*) 1 Park on Ins. 229.

(*a*) *Parmeter v. Todhunter*, 1 Camp. 541.

(*b*) *Thelluson v. Fletcher*, 1 Esp. 73; *Parmeter v. Todhunter*, *ubi supra*.

received, with a request how to proceed, is not sufficient (c). Where an owner on obtaining ill news of his vessel, communicated it to the underwriters and expressed a desire to abandon, but they insisted on the vessel's being repaired, and told the owner to pay the bills, and he consented at last that the repairs should be done, but refused to advance any money, and it became therefore necessary to raise money upon a bottomry bond, under which (the underwriters refusing to discharge it) the vessel was afterwards sold, the Court held, that although there had been no constructive total loss, there having been no abandonment, yet that the underwriters having expressly directed the repairs, they were liable for all the damage which the owner had incurred by reason of their refusal to pay the bond (d). It has been said, that if the underwriters object to the abandonment, they must do so within a reasonable time, and that by silence they must be taken to acquiesce in it (e).

No writing or formal assent is required in England in order to constitute an acceptance of the abandonment.

The abandonment must take place within a reasonable time after the assured has received intelligence of all the facts of the case, and has or might have discovered the condition of the insured property (f). The object of this rule is to give the underwriter the earliest opportunity of obtaining as much benefit as possible from any part of the property that may still be of value (g). What is a reasonable time must depend upon the circumstances of each particular case.

The assured should give notice of abandonment at the earliest opportunity (h). In one case, three weeks (i), and in another, five days (k), after the receipt of the intelligence of the loss was held to be too late. If the owner abandons as soon as he is furnished with all the facts of the case, he will not be prejudiced by a delay on the part of his captain in communicating the

(c) *Martin v. Crockatt*, 14 East, 465.

(d) *Da Costa v. Newnham*, 2 T. R. 407.

(e) *Hudson v. Harrison*, 3 B. & B. 97; see, however, *Peele v. Merchants' Insurance Company*, 3 Mason (American) Rep. 27.

(f) *Gernon v. The Royal Exchange Assurance Company*, 6 Taunt. 383.

(g) See the judgment in *Roux v. Salvador*, 3 B. N. C. 286; and the judgment of Lord Kenyon in *Allwood v.*

Henckell, 1 Park on Ins. 281; *Mitchell v. Edie*, 1 T. R. 608; *Davy v. Milford*, 15 East, 559; *Abel v. Potts*, 3 Esp. 242; *Fleming v. Smith*, 1 H. of L. C. 513.

(h) *Dean v. Hornby*, 3 E. & B. 180.

(i) *Anderson v. The Royal Exchange Assurance Company*, 7 East, 38; see also *Barker v. Blakes*, 9 East, 283; *Aldridge v. Bell*, 1 Stark. 498; *Kelly v. Walton*, 2 Camp. 155.

(k) *Hunt v. The Royal Exchange Assurance Company*, 5 M. & S. 47.

intelligence to him (*l*). If, however, the assured by his own acts, as for instance, by recognizing a sale of damaged goods as on his account, and by retaining the proceeds of such a sale in his own or his agent's hands, or by any course of conduct with a view to his own interest, voluntarily prejudices the interests of the underwriters in the recovery of the produce of the thing insured, he precludes himself from recovering as for a total loss (*m*).

The effect of an abandonment is to transfer the whole property and interest in the thing insured to the underwriter, as from the date of the loss (*n*); and consequently it enures as a binding agreement to assign, if necessary, what is abandoned; the assured in the meantime being in the position of a trustee for the underwriter (*o*). Where a ship is abandoned, the underwriter becomes entitled not merely to her hull, but to the use of her, and to the advantages resulting from the completion of the voyage. The abandonnee is considered as the purchaser of the ship from the moment of the casualty to which the abandonment refers (*p*). If the ship, therefore, notwithstanding the abandonment, proceeds and earns freight, that portion of it which is earned after the abandonment belongs to the underwriter (*q*). If the freight be not divisible, the whole passes to the underwriter on the ship, even although there be a separate insurance on the freight, and the latter is abandoned to the insurers of it at the same time as the ship is abandoned (*r*). But where a

(*l*) *Read v. Bonham*, 3 B. & B. 147.

(*m*) See *Mitchell v. Edie*, 1 T. R. 608; and the observations on this case in *Roux v. Salvador*, 3 B. N. C. 289.

(*n*) *Cammell v. Sewell*, 3 H. & N. 617; *S. C.*, in Cam. Scacc., 5 H. & N. 728. See also Arnould on Ins., sect. 413, and the foreign authorities collected in note (*x*) to that section. In America, the same rule prevails as in England. See *Robinson v. The United Insurance Company*, 1 Johnson (U. S.) Rep. 592.

(*o*) See the judgment of Lord Truro in *The Scottish Marine Insurance Company v. Turner*, 1 Macqueen's H. of L. C. 342.

(*p*) See the judgment of Lord Ellenborough in *Case v. Davidson*, 5 M. & S. 82.

(*q*) *Barclay v. Stirling*, 5 M. & S. 6; *The Scottish Marine Insurance Company v. Turner*, 1 Macqueen's H. of L. C. 334. If a *pro rata* freight is actually due be-

fore the abandonment, it belongs to the shipowner. *Luke v. Lyde*, 2 Burr. 882; 2 Arnould on Ins. 1151 (2nd edit.).

(*r*) *Case v. Davidson*, 5 M. & S. 79; *S. C.*, in error, 2 B. & B. 379; see also *Thompson v. Rowcroft*, 4 East, 34; *Leatham v. Terry*, 3 B. & P. 479; *McCarthy v. Abel*, 5 East, 388; *Ker v. Osborne*, 9 East, 378; *Sharp v. Gladstone*, 7 East, 24; *Stewart v. The Greenock Marine Insurance Company*, 2 H. of L. C. 159; *Miller v. Woodfall*, 8 E. & B. 493. It has been observed by Mr. Chancellor Kent (3 Kent Comm. 334, note), that the marginal note to *Case v. Davidson* is incorrect in stating that the underwriter was held to be entitled to the freight earned subsequently to the abandonment, since it appears by the report that the Court held that he was entitled to the whole freight. But the expression "freight earned subsequently to the abandonment," would seem to mean freight becoming due after the abandon-

shipowner who abandons has carried in the ship goods on his own account, nothing in the nature of freight for the carriage of these goods passes to the abandonee (s).

Where a ship is abandoned before the voyage is completed, and the cargo is transhipped and carried to its destination by another vessel, the underwriters are not entitled to the freight earned by the latter, for the master in chartering her acts as agent for his owners and not for the underwriters (t).

Where the ship and freight are separately insured, and the ship, although abandoned as a total loss, earns freight which passes to the underwriters on the ship, the owner cannot recover against the underwriters on freight; for the freight, in fact, has been earned, and the right of the underwriters on the ship to claim it arises not from a peril of the sea, but from the election made by the shipowner to abandon the ship (u).

In cases of abandonment, the parties who are entitled to the ship or freight take them charged with the necessary expenses resulting from the loss (x); but not with incumbrances or liens which are unconnected with the casualty which caused the loss. Nor are they liable to third parties for the carrying out of the charter-party, or contract under which the ship is freighted (y).

Upon a valid abandonment the master becomes the agent of the insurer, and it is his duty to act with good faith, care, and diligence, for the protection and recovery of the property (z). The assured are not, after abandonment, bound by the acts of

ment; and in the case in question, the whole of the freight became due after the abandonment, although part of it then became due in respect of that portion of the voyage which had been performed before the abandonment. In this sense, the terms correctly express the rule in England, which is, that the contract as to the freight must be looked to, and that if by this contract the whole becomes due after the abandonment, there can be no distribution of it *pro rata itineris* between the underwriters on ship and freight. In the United States, however, a more equitable rule is adopted. On an accepted abandonment of the ship, the freight is apportioned *pro rata itineris*, that is to say, that portion of it which would have been earned previously to the disaster (if the contract had made the freight divisible), is retained by the shipowner, or his representative the insurer on the freight, and the remainder goes to the insurer on the

ship. See *United Insurance Company v. Lenox*, 1 Johns. (American) Rep. 377; 2 *ib.* 443; and the other cases cited, 3 Kent Comm. 333, and Phillips on Ins. c. 17, s. 17, where the continental authorities on this subject are mentioned. As to the passing of freight on a mortgage of a ship, see *ante*, p. 38, and *Gardner v. Cazanove*, 1 H. & N. 423.

(s) *Miller v. Woodfall*, 8 E. & B. 498.

(t) *Hickie v. Rodocanachie*, 4 H. & N. 455.

(u) *Scottish Marine Insurance Company v. Turner*, 1 Macqueen's H. of L. Cases, 334.

(x) *Sharp v. Gladstone*, 7 East, 24; *Barclay v. Stirling*, 5 M. & S. 6.

(y) See the observation of Lord Ellenborough in *McCarthy v. Abel*, 5 East, 398; Phillips on Ins. c. 17, s. 15; 2 Arnould on Ins. 1181 (2nd edit.).

(z) See 3 Kent Comm. 331, and the argument in *Cammell v. Sewell*, 3 H. & N. 617.

the master, unless they subsequently adopt them. In one case, indeed, it was held at *Nisi Prius*, that the assured were liable for stores supplied to the vessel by the order of their supercargo after an abandonment (*a*).

ADJUSTMENT.

The settlement between the assured and the underwriters of the amount to be paid when a loss has occurred, and of the proportion to be borne by each underwriter, is known by the term *adjustment*. The principles upon which these payments are calculated vary according to the usage of different mercantile countries. In England, they have been tolerably well determined, either by positive decision, or by the long acquiescence of merchants and underwriters in a particular practice.

If the policy be valued, and the loss total, the whole sum named in the policy is payable. If the loss be total of a portion only of the cargo, such a proportion only of the sum named in the policy as the goods lost bear to the whole cargo is payable. If the loss be partial, the value in the policy must be taken as the basis of the adjustment, and the sum payable bears the same proportion to the whole value in the policy, as the price of the damaged goods bears to the price of sound goods of a similar character at the port of delivery. Thus, if the damage to the goods be 50 per cent., the insurer pays, not half of the price of sound goods at the port of delivery, but half the value at which the goods are estimated in the policy (*b*).

The adjustment in the case of an open policy proceeds on somewhat different principles. If the subject-matter of the insurance is a ship, and the loss is partial, much difficulty would

(*a*) *Mitchell v. Glennie*, 1 Stark. 230; and see *ante*, p. 66.

(*b*) See *Lewis v. Rucker*, 2 Burr. 1167; *Goldsmid v. Gillies*, 4 Taunt. 803; the judgment in *Usher v. Noble*, 12 East, 646, and *Forbes v. Aspinall*, 13 East, 327. See also *Tobin v. Harford*, 13 C. B., N. S. 791, cited *ante*, p. 345, where the rule laid down in the text was recognized, although, under the peculiar circumstances of that case, it did not admit of being applied. A practice has been acted upon by English underwriters in cases in which the policy is valued, and the loss an average loss, which is called "*opening the policy*;" that is, to disregard the agreed value named in the policy, and also to pay

upon the value of the goods at their port of destination and not at their port of loading. The first of these rules is clearly wrong, both in principle and on authority. See the cases cited above, and for an explanation of how the error probably arose, 1 Arnould on Ins. 358 (2nd edit.); as to the second, see the authorities cited *post*, p. 419, note (*g*), which show that even were it right to reject the agreed value, the value of the goods at their port of loading must be taken as the basis. As between several underwriters, however, who, standing in the place of their insurers, are contributing to an average loss, it is correct to take the value of the goods at the port of destination.

arise in calculating the actual benefit derived by the owner from the substitution of new materials for old in repairing the vessel. To obviate this, the arbitrary but convenient rule has generally been adopted of making the insurer liable to the amount of two-thirds only of the cost of repair, deducting, as it is said, one-third new for old (*c*). This is, however, a rule rather of convenience and custom than of law, and does not apply in all cases (*d*). Thus, it does not apply to a ship on her first voyage (*e*); nor are the underwriters entitled to make this deduction in settling with the shipowner if the ship, through their default in refusing to pay for repairs which they have directed, is sold by the parties who have advanced the money to repair her, and is never returned to the free possession of the owner (*f*).

If the insurance by open policy be upon goods, and the loss total, the assured is entitled to recover, not the amount for which the goods would have sold at their port of destination, but the amount at which they were invoiced at the loading port, together with the premium of insurance and commission (*g*). It has been doubted whether a payment made upon the shipment of goods can be added to their price, so as to form part of their value under an open policy. Such a payment is not, it has been said, properly freight, but the price of the privilege of putting the goods on board the ship, in order to have the opportunity of their being conveyed to the place of her destination (*h*). Where payments were made by the agent of the assured at a foreign port where goods were shipped, for port charges and other incidental expenses, in accordance with the terms of the charter-party under which the assured had the use of the ship, it was held that they could not recover these sums from the underwriters under a policy on merchandize, since the

(*c*) *Poingdestre v. The Royal Exchange Assurance Company*, R. & Moo. 378.

(*d*) *Ibid.*

(*e*) *Fenwick v. Robinson*, 3 C. & P. 323; *Piris v. Steele*, 2 M. & Rob. 49; *S. C.*, 8 C. & P. 200. See the latter case, also, as to what is a first voyage within the meaning of this rule.

(*f*) *Da Costa v. Newnham*, 2 T. R. 407.

(*g*) *Usher v. Noble*, 12 East, 639; *Laughorn v. Allnutt*, 4 Taunt. 511. The same rule has been acted upon in America. See 3 Kent Comm. 336; Phillips

on Ins. c. 16, s. 3. And in France, see Emerigon, vol. i. p. 262: "En fait de prêt à la grosse et d'assurance on ne fait point attention à la valeur des effets au temps de leur perte, mais seulement à ce qu'ils valoient au temps de leur chargement." See also the Code de Commerce, Art. 339, where it is said, "L'estimation en est faite suivant le prix courant au temps et au lieu du chargement, y compris tous les droits payés et les frais faits jusqu'à bord."

(*h*) *Per Lord Tenterden in Winter v. Haldimand*, 2 B. & Ad. 659.

money was not freight, nor had it any distinct relation to the goods shipped (*i*). If the loss be partial only, the amount payable is ascertained by taking the difference between the selling price at the port of delivery of the damaged goods, and the price which they would have fetched there if sound, and the underwriter pays the same proportion of the estimated value of the goods, that is to say, of their invoice price, adding to it the premium and commission (*k*). In this way the loss is computed on the gross proceeds of the goods. To calculate it according to their net proceeds would be erroneous, for the underwriter ought not to bear any loss from fluctuation of markets, or port duties, or charges after the arrival of the goods at their port of destination (*l*). Although the underwriter is not liable as for a total loss, beyond the amount for which he has subscribed the policy, it has been held that he may be liable for money expended in necessary repairs to the ship, or about her defence and recovery before the total loss, notwithstanding it may exceed his subscription (*m*).

Freight is seldom insured by an open policy; when it is, the loss is adjusted according to the custom at Lloyd's by paying the amount of the gross freight; and although the assured thereby recovers more than an indemnity, the usage has been upheld by a Court of law (*n*).

It was formerly considered that the assured could not recover interest upon the sum insured (*o*), unless indeed he had made a demand of the money, and informed the underwriter that interest would be required (*p*). But now the jury may, in actions on policies of assurance, give damages in the nature of interest, over and above the sum recoverable on the policy (*q*).

How and by
whom made.

The adjustment on policies is usually settled on behalf of the assured by their agents or brokers. The agent or broker who

(*i*) *Winter v. Haldimand*, 2 B. & Ad. 649.

(*k*) See *Usher v. Noble*, 12 East, 639; *Waldron v. Coombe*, 3 Taunt. 162; and *Stevens on Average*, 118, 131.

(*l*) *Johnson v. Sheddon*, 2 East, 581; *Hurry v. The Royal Exchange Assurance Company*, 3 B. & P. 308; and see per Buller, J., in *Dick v. Allen*, 1 Park on Ins. 167.

(*m*) *Le Cheminant v. Pearson*, 4 Taunt. 367. It appears that properly these sums are recoverable as money paid un-

der the clause of the policy which authorizes the assured to labour for the recovery of the property insured. *Ib.*, and *Lewis v. Janson*, 12 East, 665; *Stewart v. Steele*, 5 S. N. R. 927. See as to the mode of proving a loss by average, *Drake v. Marryatt*, 1 B. & C. 473.

(*n*) *Palmer v. Blackburn*, 1 Bing. 61.

(*o*) *Kingston v. McIntosh*, 1 Camp. 518.

(*p*) *Bain v. Case*, M. & M. 262.

(*q*) 3 & 4 Will. 4, c. 42, s. 29.

had authority to subscribe the policy has also power to adjust it (r); and where it was shown that an agent had been in the habit of underwriting policies and settling losses, it was held that he might refer the dispute respecting the adjustment to arbitration (s). It has been said that if a broker keeps the policy in his hands, it will be presumed that he promised to collect the sums due from the underwriters upon the happening of a loss (t).

Where a broker has received credit in account with the underwriter for a loss, he is liable to his principal for money had and received; and if the underwriter's name has been erased from the policy, the broker, having deprived his principal of all remedy against the underwriter, can dispute neither the underwriter's liability for the loss, nor his own receipt of the sum insured (u). Where a broker took a bill from the underwriter for the balance of account due to the broker, including the amount of the loss, and the bill was made payable at a later date than that at which the loss would have been payable in cash, it was held that the assured might recover for money had and received against the broker, although the bill was dishonoured (x).

Whether, however, the underwriter is discharged, as against the assured, by a settlement in account with his broker, is a question which has been frequently discussed. In one of the earliest cases on the subject, the underwriter credited the broker with the sum due on the policy, but, instead of paying it, set it off against the account of premiums due by the broker to him on other policies to which the assured was not a party. It was proved that it had been the practice at Lloyd's for many years thus to settle losses; but the Court held that the broker was only entitled to receive payment in money, and that no usage could sanction a course of business which they thought amounted to a practice of paying the debt of one person with the money of another (y). Upon another occasion, the broker, after the adjustment, credited himself in account with the underwriter for

(r) *Richardson v. Anderson*, 1 Camp. 46, note.

(s) *Goodson v. Brooke*, 4 Camp. 163.

(t) See *per* Lord Ellenborough in *Bouffield v. Creswell*, 2 Camp. 545.

(u) *Andrew v. Robinson*, 3 Camp. 199.

(x) *Wilkinson v. Clay*, 6 Taunt. 110; S. C., 4 Camp. 171.

(y) *Todd v. Reid*, 4 B. & A. 210; see the observation on this case by Parke, B., in *Stewart v. Aberdeen*, 4 M. & W. 224. The report is incorrect in stating that there was any settlement in account between the broker and underwriter.

the loss, and in an account which he transmitted to the assured, debited himself for the same amount. The assured drew on the broker for the balance due to him on that account; the broker accepted the bill, but becoming afterwards bankrupt, it was dishonoured. The policy remained in the broker's hands uncanceled. The Court held that the underwriter was not discharged (z).

In two subsequent cases, attempts were made to establish the usage in question, but the underwriters failed to make out that the assured knew of the custom, or had assented to such a mode of settling (a). In one of these cases the name of the underwriter had actually been erased from the policy, but as that had not been done with the assent of the assured, the Court held that the underwriter's liability was not affected by it (b).

In all the above cases, except one (c), the right of the underwriters to settle with the assured by an allowance in account with the broker was claimed irrespectively of the state of accounts between the assured and his broker. In the single instance where this was not so, the fact that the name of the underwriter remained on the policy had great weight with the Court. In the latest important case on this subject (d), which appears to have shaken the strict rule laid down in the earlier cases, the underwriter pleaded that a settlement by allowance in account between him and the brokers had been made according to the usage, and with the assent of the assured. It appeared that the loss had been settled between the brokers and the underwriter, according to the practice above described, and that the subscription of the underwriter had been struck out, and that the brokers had advised the assured that the loss was about to be settled, and credited him with the amount on account, and that he had drawn bills on them for the amount. The usage at

(z) *Russell v. Bangley*, 4 B. & A. 395.

(a) *Bartlett v. Pentland*, 10 B. & C. 760; *Scott v. Ireing*, 1 B. & Ad. 605. In *Bayliffe v. Butterworth*, 1 Ex. 425, a question arose as to the usage amongst Liverpool share brokers, and it was doubted by Parke and Rolfe, BB., whether a principal employing a broker to contract for him was not bound by a contract made in the usual way, although he was not cognizant of the usage. In *Sweeting v. Pearce*, 7 C. B., N. S. 449, S. C. in Cam. Scacc., 9 C. B., N. S. 534,

it was held that a person who employed an insurance broker was not bound by a custom as to the settlement of a loss at Lloyd's which was generally known to merchants and shipowners, but which was found by the jury not to be known to the broker's principal. See also *ante*, p. 342; *Bayley v. Wilkins*, 7 C. B. 886, and *Westropp v. Solomon*, 8 C. B. 345.

(b) *Bartlett v. Pentland*, *ubi supra*.

(c) *Russell v. Bangley*, *ubi supra*.

(d) *Stewart v. Aberdeen*, 4 M. & W. 211.

Lloyd's was proved, as well as the assured's knowledge of it. The Court held that there was evidence to support the substance of the plea, and that the underwriter was discharged; and they said that where a mercantile agent is employed to receive money for another in the general course of his business, and the known general course is for the agent to keep a running account with the principal, and to credit him with sums which he may have received by credits in account with the debtors, with whom he also keeps running accounts, and not merely with monies actually received, the rule that an agent has no authority to pay a demand of his own upon the debtor by a set-off in account with him, cannot properly be applied; but that it must be understood, that where an account is *bond fide* settled according to that known usage, the original debtor is discharged, and the agent becomes the debtor, according to the meaning and intention, and with the authority of the principal (e).

If the policy is under seal, and is effected in the name of the broker, it is clear that the underwriter is discharged by setting off his debt against premiums due from the broker to him; for the contract is in law made, not with the assured, but with the broker, who alone can sue upon it as trustee for the assured; and if there is a defence against the trustee, there is also, at law, a defence against the person for whom he is suing (f).

An adjustment made and assented to by the underwriter is *Effect of.* *prima facie* evidence of his liability on the policy and of the amount due (g). But as it does not alter the position of the parties or form a substantive contract on a new consideration, it produces no further effect than shifting the onus of proof (h). It may, therefore, be rebutted by showing that the adjustment was obtained through fraud, or was made under a mistake of fact, or even of law (i), or through an unfair suppression of any material circumstance (j). If, however, the amount due upon a

(e) See the judgment in *Stewart v. Aberdeen*, 4 M. & W. 228.

(f) *Gibson v. Winter*, 5 B. & Ad. 96. There is no right either at law or in equity to deduct a loss on a policy underwritten by a testator with a broker, from the amount due from the broker to the executors for premiums, *Beckwith v. Bullen*, 8 E. & B. 683.

(g) 1 Park on Ins. 193; and see per Lord Ellenborough in *Shepherd v. Chew-*

ter, 1 Camp. 275, and *Luckie v. Bushby*, 13 C. B. 864.

(h) See the note to *Shepherd v. Chewter*, *ubi supra*, and *Herbert v. Champion*, 1 Camp. 134.

(i) *Christian v. Coombe*, 2 Esp. 489; *Sheriff v. Potts*, 5 Esp. 96; and see the observation of Sir J. Mansfield, C. J., in *Steel v. Lacy*, 3 Taunt. 285; *Reynier v. Hall*, 4 Taunt. 725.

(j) *Shepherd v. Chewter*, *ubi supra*.

loss has been actually paid, with a full knowledge of the facts, it cannot be recovered back upon the ground that it was paid under a mistake of law (*k*).

Where an underwriter paid a loss to a broker who had effected the policy as agent for a shipowner, as the underwriter knew, and afterwards, having discovered that the policy was voidable upon the ground of concealment, he sued the broker to recover back the amount which had in the meantime been paid over by the latter to his principal, it was held that the amount of the loss could not be recovered back from the broker; and further, that it made no difference whether the money had been actually paid over to the principal, or had merely been allowed in account, or expended for him by his direction (*l*).

When a policy is adjusted it is a common practice for the broker of the underwriter to give to the assured or his agent his own note, called a credit note, for the amount of the loss, payable in a month. This does not, however, affect the liability of the underwriter, who, should the broker become insolvent during the month, must pay the loss to the assured (*m*).

REMEDIES ON POLICY.

The mode of enforcing payment of a loss is by an action at law on the policy (*n*). This remedy may be resorted to, notwithstanding an express provision in the policy that all disputes shall be referred to arbitration (*o*). But it has been decided in the House of Lords, that, although where a right of action has accrued, the parties cannot by contract provide that the Courts shall not have jurisdiction to award and enforce damages in respect of it, yet, that there is no objection to a condition in a policy of insurance stipulating that if any difference shall arise it shall be referred to arbitration to settle the amount payable, and that the obtaining the decision of the arbitrators shall be a

(*k*) *Bilbie v. Lumley*, 2 East, 469. See also *Kelly v. Solari*, 9 M. & W. 54; *Higgs v. Scott*, 7 C. B. 63.

(*l*) *Holland v. Russell*, 1 B. & S. 424.

(*m*) *Macfarlane v. Giannocopulo*, 3 H. & N. 860.

(*n*) The action is in assumpsit if the policy is not under seal; if it is, the action is in debt or covenant. By the Common Law Procedure Act, 1852 (15 & 16 Vict. c. 76, s. 3), no form of action need be mentioned in the writ of summons. As to the mode in which the interest of the assured may be

averred in the declaration, see Rule 9 of the Pleading Rules of Hilary Term, 1853. The verdict may be entered distributively where there is a plea denying that the subject matter of the insurance, or any part thereof, was lost by the perils insured against, and the plaintiff recovers only as to a portion. *Paterson v. Harris*, 2 B. & S. 814.

(*o*) *Kill v. Hollister*, 1 Wils. 129. See also *Thompson v. Charnock*, 8 T. R. 139; *Harris v. Reynolds*, 7 Q. B. 71; *Scott v. Avery*, 8 Ex. 487; *Horton v. Sayer*, 4 H. & N. 643.

condition precedent to the maintaining an action; for this is in fact only a qualified contract of insurance, and such a provision operates to prevent any cause of action whatever from arising until the amount to be paid has been ascertained by the arbitrators (*p*).

If the policy is under seal, and distinctly shows on the face of it who are the parties to it (as between A. of the one part, and B. of the other part), no person not a party to it can sue on it, although it appear to have been made for his benefit (*q*); if, however, the policy is by *deed poll*, and is effected with one of several owners who is named in it, the other parties really interested in the subject-matter of the insurance may sue on it jointly with him, although they are not *named* in the deed, provided they are sufficiently designated in it, that is to say, if the policy shows that there are other parties interested, and the covenants are made with the "assured" (*r*). If the policy is not under seal, the action may be brought in the name either of the principal or of the agent who effected it (*s*). It is hardly necessary to observe, that the several underwriters are not jointly, but severally, liable on their subscriptions.

Where two or more actions are brought against different defendants on the same policy (*t*), or the same question is involved in several actions on different policies (*u*), the Court will, on the application of the defendants at any time after appearance, grant a consolidation rule staying the proceedings in all the actions but one, upon the defendants undertaking to be bound in the others by the result of that one. This rule is considered as a favour to the defendants; the Courts have not, therefore, usually granted it except with the consent of the plaintiff (*x*). The defendant is bound, under the terms of the

Consolidation rule.

(*p*) *Scott v. Avery*, 5 H. of L. Cases, 811; *S. C.*, Cam. Scacc., 8 Ex. 497; *Tredwen v. Holman*, 1 H. & C. 72, and *Braunstein v. The Accidental Death Insurance Company*, 1 B. & S. 782. See also the Com. Law Proc. Act, 1854, s. 11.

(*q*) 2 Inst. 673; and see *ante*, p. 254. Policies are rarely by deed *inter partes*.

(*r*) *The Sunderland Marine Insurance Company v. Kearney*, 16 Q. B. 925. See also *Green v. Horns*, 1 Salk. 197; and 1 Chit. Plead. 4. It is a common practice for policies by deed poll to be effected by agents or brokers, "for and in

the names of all persons to whom the same doth appertain," &c. There appears to be no doubt that on such policies the principals may sue the underwriters.

(*s*) 1 Chit. Plead. 8; *ante*, p. 252.

(*t*) *Hollingsworth v. Brodrick*, 4 A. & E. 646; Arch. Pract. (1856), 1275.

(*u*) *McGregor v. Horsfall*, 3 M. & W. 320; *Ohrly v. Dunbar*, 5 A. & E. 824; see also *Sharp v. Lethbridge*, 4 M. & Gr. 37.

(*x*) *Doyle v. Anderson*, 1 A. & E. 635; *McGregor v. Horsfall*, 3 M. & W. 320.

ordinary rule, by the verdict in the first action, if it is satisfactory to the judge. But the Court will not, without consent, bind the plaintiff by the result of the first action (*y*); nor will he, after the ordinary rule, be restrained from bringing a second action, although he has not paid the costs of the first (*z*).

A claim against the assured for premiums due from them, cannot be set off in an action on the policy for a partial loss, even if it have been adjusted; for in either case the action is only for unliquidated damages (*a*).

Effect of proviso that funds of company shall be alone liable, and that members shall be liable only to extent of their shares.

Policies underwritten by joint stock co-partnerships and by corporations, often contain stipulations that the funds of the body shall alone be subject to make good the loss, and that no shareholder shall be liable to be charged by reason of the policy, beyond the amount of his shares in the public stock (*b*).

Where an action was brought against a corporation on a policy which contained a provision to this effect, and also a covenant that the funds should be liable and should be applied to make good the loss, it was held that this amounted to an absolute covenant by the corporation to pay the sum insured if a loss was incurred, and that it was not necessary to aver in the declaration that the funds were sufficient to meet the demand (*c*). It is very doubtful whether the deficiency of funds, if pleaded, is any defence in such a case to an action against a corporate body. The indication of the source out of which the

In *Hollingsworth v. Brodrick*, 4 A. & E. 646, the Court granted the rule, although the plaintiff objected, but it was afterwards drawn up by consent.

(*y*) *Doyle v. Anderson*, 1 A. & E. 635.

(*z*) *Doyle v. Douglas*, 4 B. & Ad. 544.

(*a*) *Castelli v. Boddington*, 1 E. & B. 66, 879; *Luckie v. Bushby*, 13 C. B. 864. See also *Beckwith v. Bullen*, 8 E. & B. 683.

(*b*) The number of these associations, societies, or clubs, has of late years greatly increased in England, and questions often arise as to the construction of the rules by which they are regulated. These questions are usually decided by arbitration, and as the rules of the different associations vary in language, the decisions upon them are of little general value. By the rules of some of these societies, the assured, if he mortgages his vessel, must, at the peril of forfeiting his claim under the policy, deliver

to the insurers a deed containing a covenant by the mortgagee to pay the premium. This rule must be strictly adhered to. See *Turnbull v. Woolfe*, 11 W. R. 55, overruling the decision of Stuart, V. C., 3 Giff. 91. In some of these clubs no policy is issued. In *Bromley v. Williams*, 32 L. J., Chanc. 716, it was argued that such a mode of insuring was illegal, as contravening the Stamp Act, 35 Geo. 3, c. 68, s. 11. The Master of the Rolls held that the association was legal, and also inclined to the opinion that no policy was necessary.

(*c*) *The Sunderland Marine Insurance Company v. Kearney*, 16 Q. B. 925. It is to be observed, that this was not the case of a company completely registered under the 7 & 8 Vict. c. 110, but of a corporate body the individual members of which could not be charged personally, the corporate fund alone being liable.

claim is to be paid, seems rather to impose a duty on the insurers to raise the fund, than to make its existence a condition precedent to their liability (*d*). Where such a policy was granted by a joint stock company not registered, and the action was brought against the subscribing directors, it was held, on a declaration which averred the sufficiency of the funds (an averment which appears to have been necessary), that the defendants were personally and jointly liable (*e*). If the members of such a co-partnership who sign the policy have power to bind their co-partners, it is not necessary to sue the members who signed; the other shareholders may be sued, and are liable to the extent of their shares (*f*). It was held, indeed, where a judgment was recovered against a company completely registered under the 7 & 8 Vict. c. 110, upon a policy containing a stipulation that the proprietors should not be liable beyond the amount of their shares, but that the company's capital stock alone should be liable, that the plaintiff was not entitled to issue execution against an individual shareholder who had not signed the policy (*g*).

Where such a policy was granted by a joint stock company, which was not registered under the Joint Stock Companies' Act, it was held, that, although the funds of the company were sufficient to pay the amount of the loss, shareholders who had not signed the policy were not liable to be sued jointly on it. It would seem, however, that if the directors who sign the policy have authority to do so, the shareholders who do not sign are liable to be sued severally, each to the amount of his unpaid up capital in the company; and that the liability of the directors, and in particular of those who sign the policy, may be more extensive, since they have the funds of the company in their

(*d*) *The Sunderland Marine Insurance Company v. Kearney*, 16 Q. B. 925; *Pilbrow v. Pilbrow's Atmospheric Railway Company*, 5 C. B. 440.

(*e*) *Dawson v. Wrench*, 3 Ex. 359. The question arose in this case on demurrer, and the declaration alleged in substance that the defendants contracted jointly. Unless, however, a distinction can be supported between the liability of the directors who actually sign the policy, and that of the other shareholders, it would appear, that the contract was not, *in fact*, joint. See *Hallett v. Dowdall*, 18 Q. B. 2.

(*f*) *Reid v. Allan*, 4 Ex. 326. The

liability is to the extent of their unpaid up shares. See the allegations in the declaration in this case, and *Hallett v. Dowdall*, *ubi supra*.

(*g*) *Halkett v. The Merchant Traders' Ship Loan and Insurance Association*, 3 Q. B. 960; *Hassell v. The Merchant Traders' Ship Loan and Insurance Association*, 4 Ex. 525. It is difficult to reconcile these cases with the rule laid down in *Dawson v. Wrench*, and *Hallett v. Dowdall*, *ubi supra*, unless a distinction can be made as to the meaning of these contracts when entered into by registered and unregistered joint stock companies.

hands, and therefore they may be considered to promise jointly to apply them towards the payment of the losses. It is, however, difficult to see how the contract of the directors, or of those who sign the policy, can be different from that of the other shareholders, if the policy has been issued under the authority of all the shareholders (*h*).

RETURN OF PREMIUM.

Where risk never commences or is apportionable.

As the premium is the consideration paid to the underwriter for assuring a risk, where that risk is not incurred it must be returned. Thus, if the policy be on goods, and none are shipped, the premium must be returned, for the risk never commenced (*i*). So, if a ship be insured for a particular voyage, and she sails on that voyage in an unseaworthy state, but without fraud on the part of the assured (*h*), or if a policy be effected on an enemy's goods before the commencement of hostilities is known (*l*), or if at the time of insuring a ship on her voyage she has arrived, and the underwriter knows it (*m*), in all these cases, as the policy never attaches, and no risk is incurred, the premium must be returned. So where, before the risk commences, there is a breach of warranty by the assured which prevents the liability of the underwriters from attaching, as where the ship is warranted to sail with convoy, and does not (*n*), or the policy is avoided by a misrepresentation made by the assured without fraud, and the risk never attaches, the premium is returnable (*o*).

(*h*) *Hallett v. Dowdall*, 18 Q. B. 2. There was in this case considerable difference of opinion among the Judges as to the construction and effect of the contract. As far as the decisions have gone in cases of this description, the Courts appear to have decided, (1), that in contracts by corporations these restricting clauses have no effect; (2), that in contracts by joint stock companies not registered they *limit the contract*, so that shareholders who have not executed the policy cannot be sued jointly on it; and (3), that where they occur in contracts by joint stock companies completely registered, they *limit the execution*, by depriving the assured of the right of issuing execution against individual shareholders, which he otherwise would have had under the 7 & 8 Vict. c. 110. The difficulties which have arisen in these cases have resulted from an attempt to create a

partnership contract with a limited and varying liability in the different members.

(*i*) *Martin v. Sitwell*, Show. 156.

(*k*) *Penson v. Lee*, 2 B. & P. 330; and see the judgment of Buller, J., in *Lowry v. Bourdieu*, 2 Doug. 471.

(*l*) *Oom v. Bruce*, 12 East, 225.

(*m*) See the judgment of Lord Mansfield in *Carter v. Boehm*, 3 Burr. 1909. This amounts to a fraud on the part of the underwriter. It has been doubted whether, if both parties are ignorant of the ship's arrival, and the policy is "lost or not lost," the premium could be recovered. See 2 Park on Ins. 562.

(*n*) *Stevenson v. Snow*, 3 Burr. 1237; *Long v. Allan*, 4 Doug. 276. See also the judgment of Lawrence, J., in *Christie v. Secretan*, 8 T. R. 198; *Colby v. Hunter*, Moo. & M. 81.

(*o*) *Feiss v. Parkinson*, 4 Taunt. 640; *Anderson v. Thornton*, 8 Ex. 425.

Although the premium paid be entire, the assured will still be entitled to receive back a portion of it, if the risk for which it is paid can be apportioned. Thus, where a ship insured from London to Halifax, to depart with convoy from Portsmouth, was unable to proceed beyond the latter place, as when she reached it the convoy had sailed, and an usage was proved to return part of the premium in such a case, the Court held that the premium might be divided into two distinct parts, relatively, as it were, to two voyages, and that that proportion of it which covered the risk not run, ought to be returned (*p*). If, however, the risk is entire, and has once commenced, there can be no apportionment or return of the premium; although it be estimated, and the risk depend upon, the nature and length of the voyage (*q*). Thus, where a ship was insured "at and from London to any port or ports for twelve months, at £9 per cent., warranted free from capture," and the ship was taken within two months from her sailing, the Court held that the assured were not entitled to a return of any part of the premium (*r*). So, if the insurance is "at and from" a port, and the ship is seaworthy for lying in harbour, but when she sails on the voyage is unseaworthy *for the voyage*, the assured is not entitled to a return of the premium, for the risk has attached (*s*). For the same reason the premium is not returnable where a deviation takes place after the commencement of the voyage (*t*), even where the insurance is on freight as well as ship, and the deviation occurs before the goods are taken on board (*u*).

Where the assured has no interest in the property insured, and effects the insurance without fraud, the premium is returnable, for the underwriters could not have been called upon to pay in case a loss had happened. Thus, where captors acting *bonâ fide* insured a prize in which, as it afterwards appeared, the Crown alone was interested, it was held that the premium must be returned (*x*). Where, however, the risk has been run,

Where there is no interest or short interest.

(*p*) *Stevenson v. Snow*, 3 Burr. 1237. See also *Meyer v. Gregson*, 2 Park on Ins. 588; *Rothwell v. Cooke*, 1 B. & P. 172.

(*q*) See the judgment of Lord Mansfield in *Tyris v. Fletcher*, 2 Cowp. 668, and *Boehm v. Bell*, 8 T. R. 154.

(*r*) *Tyris v. Fletcher*, 2 Cowp. 666. See also *Loraine v. Thomlinson*, 2 Doug. 585. In the latter case the premium was

reckoned at so much per month, but that circumstance was held to make no difference. See also *Bermon v. Woodbridge*, 2 Doug. 781.

(*s*) *Annen v. Woodman*, 3 Taunt. 299. See also *Moses v. Pratt*, 4 Camp. 297.

(*t*) *Tait v. Levi*, 14 East, 481.

(*u*) *Moses v. Pratt*, *ubi supra*. The policy was a valued one.

(*x*) *Routh v. Thompson*, 11 East, 428.

be returned if a particular event happens; in these cases the right of the assured to a return of the premium depends upon the terms of the particular contract (*n*). In other cases, where the policy has contained no such stipulation, but an established usage on the subject has been proved, the assured have been held entitled to recover back the premium in accordance with it (*o*).

(*n*) Where the premium was to be returned if the ship was "sold or laid up," it was held that there must be such a permanent laying up as put an end to the policy. *Hunter v. Wright*, 10 B. & C. 714. See as to the effect of a stipulation that the premium is to be returned if the ship sails with convoy, *Audley v. Duff*, 2 B. & B. 111; *Simond v. Boydell*, 1 Doug. 268. In the latter case the policy was on goods, and the premium was returnable if the ship "sails with convoy and arrives;" it was held that the ship was bound to sail with convoy, but not to arrive with convoy; and that it was sufficient that the goods arrived, although they did not arrive safely, there being no warranty as to their condition. "Arrived" means at the ultimate port of destina-

tion. *Kellner v. Le Mesurier*, 4 East, 396; see also *Dalglish v. Brooks*, 15 East, 295; *Leevin v. Cormac*, 4 Taunt. 483. If the ship arrives, the premium must be returned, although she has been captured and re-captured, and the assured have been obliged to pay salvage. *Aguilar v. Rodgers*, 7 T. R. 421. Where the insurance is on goods, and the plaintiff recovers for a total loss, he cannot also recover for a return of premium for convoy, for the premium is added to the invoice price of the goods in calculating the total loss. *Langhorn v. Allnutt*, 4 Taunt. 511.

(*o*) *Long v. Allan*, 4 Doug. 276; *Stevenson v. Snow*, 3 Burr. 1237. See also *Baines v. Woodfall*, 28 L. J., C. P. 338, which was the case of a fire policy on a ship.

CHAPTER VIII.

HYPOTHECATION AND SALE.

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HYPOTHECATION is a contract of pledge, whereby, in consideration of money advanced for the necessities of the ship, the vessel, freight, or cargo is made liable for its repayment, provided the ship arrives in safety. HYPOTHECATION.

It is usually effected by a deed called a bottomry bond (*a*), by which the master binds himself in a penalty to repay the sum borrowed, and also professes to assign the ship and freight, or cargo, as the case may be; with a condition that the bond shall be void if the money secured be repaid within a certain time after the safe arrival of the ship at her port of destination (*b*). When the cargo alone was hypothecated, the instrument used to be called a respondentia bond; but that term is now rarely used; the expression *bottomry bond* being now generally employed whether the vessel or her cargo be the security (*c*). This species of contract was unknown to the com-

(*a*) It is so called because the keel or bottom of the ship, *pars pro toto*, is pledged. *Scarborough v. Lyrus*, Latch. 252; *Noy*, 95; and *The Atlas*, 2 Hagg. 53. See also generally Pritchard's Admiralty Digest, tit. BOTTOMRY.

(*b*) Sometimes the hypothecation is effected by a deed poll, not in the form of a bond, which is called a bottomry bill.

(*c*) See 2 Park on Ina. 615. The term M.P.

bottomry bond is commonly made use of whether the instrument in question pledges the ship, or cargo, or both of them. It is used, therefore, throughout this Chapter in this general sense. Hypothecation of the cargo only is now of rare occurrence. See the judgments in *The Atlas*, 2 Hagg. 58, and in *The Cognac*, *ib.* 386; and Edward's Treatise on the High Court of Admiralty, 91. The Admiralty jurisdiction and prac-

mon law of this country, since by it no pledge of a chattel was valid, unless the article pledged was actually transferred to the possession of the pawnee (*d*). The right to hypothecate was, however, recognized by the civil law, and has been long adopted in the maritime law of England (*e*).

By and to
whom bot-
tomry bonds
may be given.

The owner is, as is obvious, entitled to hypothecate his ship; and he may do so without the concurrence of the master (*f*). The master, also, may, under certain circumstances which will be stated shortly (*g*), hypothecate the vessel, freight, or cargo. For this purpose it is not necessary that he should be the registered master (*h*); he possesses this power if he is the ostensible and acting master (*i*). Nor is it indispensable that the master should have been appointed by the owners; the Court of Admiralty has supported bonds effected by masters who have, in cases of necessity, been substituted by an agent of the owner (*k*), or by the consignee of the cargo (*l*), or even by the British consul at a foreign port (*m*).

In the absence of fraud or collusion a bottomry bond may be

tice is founded on the same principles in cases of bottomry and respondentia. See the judgments of Sir C. Robinson in *The Cognac*, 2 Hagg. 386, and of Dr. Lushington in *The cargo ex Sultan*, Swab. A. R. 510. By the French law, money may be advanced at maritime interest either on the body, tackle, apparel, ordnance, munition, or stores of the ship, or on the cargo, or on all of these. See the Code de Comm. Art. 315. Where the money is advanced on goods, the borrower is not discharged by the loss of the ship and cargo, unless he proves that he had goods on board to the extent of the money borrowed. *Ib.* Art. 329.

(*d*) *Bridgeman's Case*, Hob. 11; *Corset v. Husley*, Comb. 135; *Ryal v. Rolle*, 1 Atk. 175; *Reeves v. Copper*, 5 Bing., N. C. 136.

(*e*) *Justin v. Ballam*, 1 Salk. 84. See also the judgments of Lord Hardwicke in *Burton v. Snes*, 1 Ves. sen. 155, and of Lord Stowell in *The Gratitude*, 8 Rob. 255, and in *The Hero*, 2 Dods. 140. By the 7 Geo. 1, stat. 1, c. 21, s. 2, contracts made by English subjects upon loans by way of bottomry on ships in the service of foreigners designed to trade within the limits of the East India Company's charter, were made void.

By the 19 Geo. 2, c. 37, s. 5, loans on bottomry upon ships belonging to English subjects bound to or from the East Indies, were required to be made only on the ship or cargo, and to be so expressed in the bond.

(*f*) *The Duke of Bedford*, 2 Hagg. 294. See also *The Draco*, 2 Sumner (American) Rep. 157; *The Mary*, 1 Paine (American) Rep. 671, in which it was held that the right of the owner to hypothecate is not limited, as that of the master is, to cases of necessity. A master, who is also part owner, has not on that account any greater power to bind his part owners. *The Orelia*, 3 Hagg. 75.

(*g*) *Post*, p. 435.

(*h*) See the judgment of Sir J. Nicholl in *The Orelia*, 3 Hagg. 81.

(*i*) See the judgment of Sir W. Scott in *The Jane*, 1 Dods. 464. In this case the master had not been actually dismissed when the money was advanced.

(*k*) *The Kenmersley Castle*, 8 Hagg. 1.

(*l*) *The Alexander*, 1 Dods. 278; *The Rubicon*, 8 Hagg. 9.

(*m*) *The Zodiac*, 1 Hagg. 320; see also *The Cynthia*, 16 Jur. 748, in which a bond given, under circumstances of necessity, by the consul himself, was supported.

executed to the person by whom the master was appointed (*n*), or to the consignee of the cargo (*o*), or even, under strong circumstances of necessity, to the agent of the shipowner (*p*). But a bottomry bond cannot be given to a person who, at the time, is indebted to the shipowner in respect of the ship (*q*).

The master has power, in cases of necessity, and in such cases only, to hypothecate the ship, freight, or even the cargo. Necessity is the very foundation of this right. If the master, when in a foreign country, or when placed in any other position in which it is impossible to communicate with his owners, is in want of money to repair or victual the vessel, or for other necessities, he is bound, in the first instance, to obtain it from his owner's agent (*r*), or to raise it on the credit of his owners; if he can do so he must; but if he cannot otherwise obtain the money he may hypothecate (*s*).

When master may hypothecate ship, cargo, and freight.

Thus, where a British ship was carried into a foreign port, in the possession and under the control of a mutinous crew, and expenses were incurred by a person employed by the British vice-consul to investigate into the mutiny and restore the master to his command, the Court of Admiralty supported a bottomry bond given by the master to cover these expenses (*t*). The right of the master to hypothecate is not confined to cases of necessity arising in a country other than that of the owner's residence. He may hypothecate even although the ship is in a port of the country in which the owners reside, provided he

(*n*) *The Alexander*, 1 Dods. 278; *The Rubicon*, 3 Hagg. 9.

(*o*) *The Alexander*, *ubi supra*; *The Nelson*, 1 Hagg. 169. In America it has been held that there can be no hypothecation to a consignee. *Liebart v. The Ship Emperor*, Bee's (American) Rep. 339.

(*p*) See the judgments of Sir W. Scott in *The Haro*, 2 Dods. 144, and *The Oriental*, 3 W. Rob. 243. The decision in *The Oriental* was reversed by the Privy Council in *Wallace v. Fielden*, 7 Moo. P. C. C. 398, but not on this ground. In *The Royal Arch*, Swab. Adm. Rep. 269, Dr. Lushington said, "It is settled law that an agent may legally take a bottomry bond, and more especially he may do so with the sanction of the owner."

(*q*) *The Hebe*, 2 W. Rob. 146.

(*r*) *Lyatt v. Hicks*, 27 Beav. 616; *The Faithful*, 81 L. J., P. M. & A. 81.

(*s*) See the judgments of Lord Stowell in *The Gratitude*, 3 Rob. 265, and in *The Nelson*, 1 Hagg. 175; *Soares v. Rahn*, 3 Moo. P. C. C. 1; *Gore v. Gardiner*, *ib.* 79; *Stainbank v. Penning*, 11 C. B. 88; *Wallace v. Fielden*, *ubi supra*; *The Hamburg*, 32 L. J., P. M. & A. 161. See also Story on Agency, ss. 116, 118, and 119. It has been laid down in the Admiralty Court, that in deciding on the right of a master to hypothecate, that Court will be governed by the general maritime law and not by the *lex loci contractus*, or by the law of the country to which the ship belongs. See the judgment in *The Hamburg*, *ubi supra*, and *post*, p. 445.

(*t*) *The Gauntlet*, 3 W. Rob. 82.

have no means of communicating with them, and there is no other mode of escaping from the pressure of the necessity (*u*).

The master is not in all cases bound, before hypothecating the cargo, to communicate with the owners of it; although where this is practicable it is his duty to do so, or at least to make the attempt (*v*). Where a master executed a bottomry bond at New York without communicating with the owner, who resided at St. John's, New Brunswick, (as he might have done by telegraph,) the bond was declared to be void (*w*). So, where upon the evidence before the Court it appeared that a bottomry bond on ship and cargo had been granted by the master in Sweden, where the shipowners resided, and with their consent, but that the master had not, although under the circumstances it was practicable, communicated with the owners of the cargo, who resided at Hull, the Court was of opinion that the bond was not valid, so far as the cargo was concerned (*x*). It appeared, however, in the same case, upon further evidence being brought before the Court, that the master had, in fact, informed the cargo owners of the injured state of the ship, and that they had sent no reply to his letter, and the Court thereupon sustained the bond against them (*y*).

It was considered in a recent case, that where the master can communicate with his owner it is essential to the validity of the bond that the owner should be informed, not merely of the ship's distress, but also of the master's intention to hypothecate (*z*).

(*u*) *La Ysabel*, 1 Dods. 273; *The Trident*, 1 W. Rob. 29. These cases establish the principle that the locality of the owner's residence is only one ingredient (generally, however, a very material one) in inquiring into the necessity of the act. See also *The Rhadamanthe*, 1 Dods. 201; *The Lechiel*, 2 W. Rob. 34; and *The Oriental*, 3 ib. 243. In *Arthur v. Barton*, 6 M. & W. 138, *Johns v. Simons*, 2 Q. B. 425, and *Beldon v. Campbell*, 6 Ex. 886, the same principle was acted upon where the owner's credit had been pledged without any hypothecation. As to what is a home port in relation to persons having claims for repairs done to, or supplies furnished to ships, see the 19 & 20 Vict. c. 97, s. 8, and *ante*, p. 70, note (*o*).

(*v*) *The Hamburg*, 32 L. J., P. M. &

A. 161.

(*w*) *Wallace v. Fielden*, 7 Moo. P. C. C. 398.

(*x*) See the judgment of the Privy Council in *Wilkinson v. Wilson*, 8 Moo. P. C. C. 469, in which that Court differed in this respect from the judgment below in *The Bonaparte*, 3 W. Rob. 298. See also the judgment of Lord Stowell in *La Ysabel*, 1 Dods. 273.

(*y*) *Wilkinson v. Wilson*, *ubi supra*.

(*z*) See *The Olivier*, 1 Lush. A. R. 484, and the view taken in this case of the decision in *Wallace v. Fielden*, *ubi supra*. Doubts were, however, expressed by Dr. Lushington in his judgment in the first-mentioned case, as to the correctness of this view. See also the judgment of Lord Cottenham in *Glascott v. Lang*, 2 Phill. 310.

It is not essential to the validity of a bottomry bond that it should be given in order to enable the ship to conclude a voyage for which she has been chartered; a bond may be granted upon a British ship in a foreign port for the expenses of repairs and the outfit for a new voyage (*a*).

The money must be needed for the ship. The master cannot hypothecate for a debt of his own (*b*); nor for a general average contribution arising in respect of an earlier voyage (*c*); nor can the master hypothecate for a debt incurred for the ship on a previous voyage (*d*). The owner of a ship in a foreign port may, however, to enable her to come home, include in a bottomry bond charges which relate to the outward cargo (*e*). It is not essential that there should have been an actual advance of money before the bond is given. If the obligee has pledged his credit for the repairs of the ship the bond is good (*f*).

The necessity for the money must arise in the course of the master's acting within the scope of his authority; if it be caused by his acting or carrying out schemes contrary to the orders of his owners, he has no power to hypothecate (*g*).

The cargo may be hypothecated not only for its own immediate benefit, but also for the reparation of the ship; since the repairs of the ship are indirectly necessary for the preservation and conveyance of the cargo (*h*). But as the contract of hypothecation is a mere pledge and not a contract of transfer, the master has no right to undertake that the cargo shall be placed for sale in the hands of an agent of the person from whom the money is borrowed, and thus to deprive the merchant of all opportunity of redeeming the pledge (*i*).

Where the freight is hypothecated, the bond does not attach

(*a*) *The Royal Arch*, Swab. Adm. Rep. 269.

(*b*) *King v. Perry*, 3 Salk. 23; 6 Vin. Ab. Admiral Law (C.), pl. 2; *The Augusta*, 1 Dods. 283; *Dobson v. Lyall*, 8 Jur. 969.

(*c*) *The North Star*, 1 Lush. A. R. 45.

(*d*) *The Lochiel*, 2 W. Rob. 45; *The Osmanli*, 3 W. Rob. 198; *The Prince George*, 4 Moo. P. C. C. 21.

(*e*) *The Edmond*, 1 Lush. A. R. 57. See, in the judgment in this case, the comments upon *The Osmanli*, *ubi supra*.

(*f*) *The Royal Arch*, *ubi supra*.

(*g*) *The Reliance*, 3 Hagg. 66. See

also the judgment in *The Mary Ann*, 4 Notes of Cases, 381.

(*h*) See the judgment of Lord Stowell in *The Gratitude*, 3 Rob. 260. The power of the master over the cargo is the result of the necessity of the case; for, in the ordinary course of things, he is a mere stranger to the cargo, except for the purposes of safe custody and conveyance. *Ib.* See also Story on Agency, s. 118.

(*i*) *Johnson v. Greaves*, 2 Taunt. 344. In this case the cargo was pledged by bills of lading; there was, properly speaking, no hypothecation.

upon advances of freight made *bonâ fide*, under a stipulation in the charter-party, before the time when the bond was given (*k*).

As a bottomry bond is altogether void if executed under circumstances not warranting the hypothecation, the lender must, at his peril, ascertain that a necessity for the loan exists, that is, that without an advance of money the ship cannot proceed (*l*), and that such advance cannot be obtained on personal credit (*m*). But he is not bound to inquire into the expediency of the intended repairs; unless they are so flagrantly inexpedient as to raise a presumption of fraud (*n*); nor is he bound to see to the proper application of the money when borrowed (*o*).

Indemnity to
owner of cargo
on hypotheca-
tion.

In raising money upon bottomry the master acts exclusively as agent of the shipowner, although the sum requisite for the repairs may exceed the value of the ship when repaired, and the master may be therefore obliged to hypothecate the cargo as well as the ship. The owner of the cargo cannot insist on the repairs being done, for the shipowner is absolved from his contract to carry if prevented by the perils of the seas; but, on the other hand, it is the duty of the master, as the agent of the shipowner, to repair the ship, if there be a reasonable prospect of doing so at an expense not ruinous, and to bring home the cargo and earn the freight if possible (*p*). The shipowner, therefore, is bound to indemnify the owner of the goods against the consequences of the hypothecation. Thus, where the master of a ship damaged by sea perils hypothecated the ship, freight, and cargo for the necessary repairs, and on her return to this country the ship and freight realized less than the sum advanced, so that the owner of a portion of the cargo was compelled to contribute towards the difference, and also to pay his proportion of the costs of a suit in the Court of Admiralty instituted by the obligee of the bond, it was held that the goods' owner might sue the owner of the ship on an implied promise to

(*k*) *The John*, 3 W. Rob. 170. See further as to the hypothecation of freight, *The Jacob*, 4 Rob. 245, and *The Douthorpe*, 2 W. Rob. 73.

(*l*) See the judgment of Sir J. Nicholl in *The Orelia*, 3 Hagg. 84; *Heathorn v. Darling*, 1 Moo. P. C. C. 5.

(*m*) *Soares v. Rahn*, 3 Moo. P. C. C. 1.

(*n*) See the judgment of Dr. Lushington in *The Vibilia*, 1 W. Rob. 10, and

the judgment in *Duncan v. Benson*, 1 Ex. 555.

(*o*) *Scarborough v. Lyrus*, Latch. 252; Noy, 95; 14 Vin. Ab. Hypothecation (A.), pl. 2; and the judgment of Sir W. Scott in *The Jane*, 1 Doda. 466.

(*p*) *Duncan v. Benson*, 1 Ex. 537; 3 Ex. 644; *Benson v. Chapman*, 6 M. & G. 792; 5 C. B. 330; 3 C. B. 960.

indemnify him against the consequences of the acts of the master (*q*).

Bills of exchange, drawn by the master on the owner as a security for money advanced for the necessities of the ship, cannot be treated as instruments of hypothecation, although they are accompanied by a verbal agreement that the ship is to be liable (*r*). But bills of exchange may be, and very commonly are, given as collateral securities; and this does not affect the validity of the hypothecation (*s*). The Court of Admiralty will not deal with a bond, as a bottomry bond, merely because it was held to amount to an instrument of hypothecation in the country in which it was given (*t*).

It is necessary that, at the time when the goods are supplied, or the advances made, there should be an agreement that the amount should be secured by hypothecation (*u*). If the advances are originally made on personal credit, and no notice is given by the creditor that he intends to take a bottomry bond, a bond subsequently given to secure them will not be supported (*v*). If, however, a portion of the money advanced was lent on personal credit, and the residue on the security of the bond, the Court will enforce the bond to the extent of the latter sum (*w*).

It is an essential part of the contract of hypothecation by the master, that the repayment of the money should be dependent upon the ship's arrival at her destination. If the deed makes the loan repayable at all events, the contract is invalid

(*q*) *Duncan v. Benson*, 1 Ex. 537; 3 Ex. 644. It was held in this case, that a plea stating that the bond was executed by the master without the express authority of the shipowner, that when it was executed the costs of the repairs exceeded the value of the ship and freight, and that when the shipowner had notice of the act of the master, he had not ratified it, but had abandoned the ship and freight, afforded no answer to the action.

(*r*) *Ex parte Halkett*, 3 Ves. & B. 135; 19 Ves. 474; *The Augusta*, 1 Dods. 283.

(*s*) *The Jane*, 1 Dods. 466; *Stainbank v. Shepard*, 13 C. B. 418. See also the judgment in *The St. Catherine*, 3 Hagg. 253; *The Emancipation*, 1 W. Rob. 129; and the judgments in *The Ariadne*, *ib.*

421; *The Lord Cochrane*, 3 Notes of Cases, 180; and *The Bonaparte*, 3 W. Rob. 306.

(*t*) *The Atlas*, 2 Hagg. 54; see also *Ridgway v. Roberts*, 4 Hare, 106. The law of France requires that the master, before he hypothecates the ship or cargo, shall obtain the authority of the "Tribunal de Commerce" if in France, or of the French consul or a magistrate if in a foreign port. Code de Comm. Art. 234. By the English law there is no such requirement.

(*u*) *Gore v. Gardiner*, 3 Moo. P. C. C. 79.

(*v*) See the judgment in *The Augusta*, 1 Dods. 287; *The Wave*, 15 Jur. 518; *The Gauntlet*, 3 W. Rob. 82.

(*w*) *The Augusta*, *ubi supra*.

How master must hypothecate.

as an hypothecation (*x*). But as these instruments are the creatures of necessity and distress, and usually contain the language of commercial men and not of lawyers, they receive a liberal construction (*y*). It is not therefore necessary that the risk should be mentioned in express terms; it is sufficient if it can be fairly and reasonably inferred from the whole document that it was the intention of the parties to make the repayment of the money dependent on this contingency (*z*).

The loss of the ship, within the meaning of these contracts, is understood to be her actual destruction, or absolute loss to her owners. If she still exists, although in such a state of damage as to be constructively totally lost within the meaning of a policy of insurance (*a*), or if she is captured, and afterwards re-taken and restored (*b*), she is not lost in the sense attached to that word in the contract of hypothecation.

The Court of Admiralty will support a bottomry bond as to part of the debt secured by it, although the residue may consist of a debt that cannot be covered by such a security (*c*).

Interest that
may be re-
served.

Upon a bottomry contract the lender may stipulate to receive any amount of interest. The contract was never liable to any objection on the ground of usury, for the principal is at hazard during the voyage (*d*).

(*x*) See *Stainbank v. Fenning*, 11 C. B. 88. The owner may hypothecate the ship and make himself personally liable also if he chooses. See the judgment in *Willis v. Palmer*, 7 C. B., N. S. 360. A bottomry bond may, however, be given at the same time with and as a collateral security for bills drawn on the owners for the money borrowed. *Stainbank v. Shepard*, 13 C. B. 418. See also the observations in the judgment in these cases upon *Samsun v. Bragington*, 1 Ves. sen. 443, which has been supposed to be inconsistent with this rule. See also the judgments of Lord Stowell in *The Nelson*, 1 Hagg. 176, and in *The Atlas*, 2 Hagg. 52.

(*y*) See the judgment of Sir C. Robinson in *The Kennerley Castle*, 3 Hagg. 7; and the judgments in *The Alexander*, 1 Dods. 280, and *The Vibilia*, 1 W. Rob. 5.

(*z*) *Simonds v. Hodgson*, 3 B. & Ad. 50; 6 Bing. 114; *The Nelson*, 1 Hagg. 169; see also the judgment in *The Emancipation*, 1 W. Rob. 130. In *The Royal Oak*, Swab. Adm. Rep. 269, it

was held that the omission in a bond to state any premium for maritime risk, the rate of interest reserved being the ordinary interest only, was a circumstance of suspicion, but did not invalidate the bond.

(*a*) *Thomson v. The Royal Exchange Assurance Company*, 1 M. & S. 30.

(*b*) *Joyce v. Williamson*, 3 Doug. 164.

(*c*) See *The Augusta*, 1 Dods. 283; *The Hero*, 2 Dods. 189; *Smith v. Gould*, 4 Moo. P. C. C. 21; *The Heart of Oak*, 1 W. Rob. 204; *Dobson v. Lyall*, 3 Myl. & Cr. 453, note; 2 Phill. 323, note.

(*d*) *Sharpley v. Hurrell*, Cro. Jac. 208; *Soome v. Gleen*, Sid. 27; 2 Park on Ins. 622; and the judgment in *The Cognac*, 2 Hagg. 387. See also now the 2 & 3 Vict. c. 36, continued by the 13 & 14 Vict. c. 56. The interest reserved by a bottomry bond is commonly called *marine interest*. In the Roman law the contract was called *fœnus nauticum*, or *usura maritima*, and the interest *pretium periculi*. See the judgment of Lord Stowell in *The Atlas*, 2 Hagg. 53.

A bond given under actual duress is invalid, but a voluntary contract is not invalidated by reason of its being executed by the master whilst under arrest (e). Bond given under duress.

Although the bottomry bond purports to assign the ship to the obligee, it does not transfer the property in her, but only gives the bond holder a claim upon the ship or goods, which can be enforced by process of law (f). Effect of the contract.

The contract of hypothecation, being a mere *chose in action*, is not assignable at law. In the Court of Admiralty, however, it is considered to be assignable, and proceedings may be taken on it against the ship by the person to whom it is transferred (g).

The hypothecation of the ship binds the shipowners indirectly, but it does not render them liable to be personally sued, either in a Court of common law or in the Court of Admiralty (h). The remedy of the creditor is either against the master himself, or against the ship, which is liable into whose-soever hands she may come (i). The master cannot, therefore, pledge the shipowner to the lender of the money beyond the value of the ship (j). The lender of money upon the hypothecation of goods has no specific remedy at law against the goods themselves (k). REMEDIES ON THE CONTRACT.

The usual and most beneficial remedy for the holder of a bottomry bond is a proceeding *in rem* in the Admiralty Court against the ship, freight, or cargo (l). This Court has jurisdiction. Jurisdiction of Court of Admiralty.

(e) *The Heart of Oak*, 1 W. Rob. 204; *The Gauntlet*, 3 W. Rob. 82.

(f) See *Johnson v. Shippen*, 2 Ld. Raym. 982; the judgment in *Stainbank v. Fenning*, 11 C. B. 88; and the judgment of Sir W. Scott in *The Tobago*, 5 Rob. 222.

(g) See the judgment of Sir W. Scott in *The Rebecca*, 5 Rob. 104; and *The Prince of Saxe Cobourg*, 3 Hagg. 387. According to the French law the contract (*l'acte de prêt à la grosse*) may be negotiated by indorsement if the money was made payable to order, but the indorser is not, in the absence of any express stipulation, liable to his indorsee for more than the principal without the maritime interest. See *Code de Comm.* Art. 313, 314.

(h) See *Johnson v. Shippen*, 1 Salk. 35; *S. C.*, 2 Ld. Raym. 982; and the judgment in *Benson v. Duncan*, 3 Ex. 656.

(i) See the judgment of Powell, J., in *Trantor v. Watson*, 6 Mod. 13.

(j) See the judgment in *Benson v. Duncan*, *ubi supra*.

(k) See 2 Bl. Comm. 457 (by Coleridge); *Busk v. Fearon*, 4 East, 319; the judgment of Lord Mansfield in *Glover v. Black*, 3 Burr. 1401; and *The Prince Regent*, cited 2 W. Rob. 85.

(l) *Johnson v. Shippen*, 2 Ld. Raym. 982; *Benson v. Jeffries*, 1 *ib.* 152; *King v. Perry*, 3 Salk. 23. See also the judgments in *The Gratitude*, 3 Rob. 255; *The Rhadamanthe*, 1 Dods. 203; and *The Atlas*, 2 Hagg. 52; *The Lord Cochrane*,

tion to enforce a bottomry contract given in the course of a voyage, although it is under seal, and whether it was executed on land or at sea (*m*). And it would seem that its jurisdiction over the contract exists not only where a bond has been actually executed, but also where an agreement only for a bond has been entered into (*n*). The Court of Admiralty has no jurisdiction where the ship has been hypothecated in this country before the voyage begins (*o*). In causes of bottomry it may decide all questions as to the title or ownership of the ship, or as to her proceeds (*p*).

Therefore, to an action for freight, a plea alleging that a certain sum of money had been borrowed on a bottomry bond, that the amount had not been paid, and that thereupon, after the commencement of the action, proceedings had been instituted in the Court of Admiralty for the recovery of it, and that the defendants had, in pursuance of a monition issued out of that Court, paid the freight into the registry of that Court, was held to be a good answer, although the amount of the freight exceeded what was due on the bottomry bond (*q*).

The holder of a bond is, in this Court, entitled to priority over all the other creditors, except claimants for wages or salvage (*r*). In a recent case in the Privy Council, in which, after

1 W. Rob. 312; and the judgment in *The Trident*, *ib.* 35. The Admiralty jurisdiction is founded upon the same principles, whether the ship or the cargo be hypothecated. *The cargo ex Sultan*, Swab. A. R. 510. Jurisdiction over claims in respect of bottomry and respondentia bonds is given to the Colonial Vice-Admiralty Courts by the Vice-Admiralty Courts Act, 1863 (26 Vict. c. 24), s. 10.

(*m*) *Merstone v. Gibbons*, 8 T. R. 267; *King v. Perry*, 3 Salk. 23. See also the judgment of Sir W. Scott, in *The Gratitude*, 3 Rob. 259.

(*n*) See the judgment of Dr. Lushington in *The Aline*, 1 W. Rob. 122. It has been doubted whether the Court of Admiralty has jurisdiction where the bond is absolute, and not defeasible by the loss of the ship; such an instrument not being strictly a bottomry bond. See the judgment of Lord Stowell in *The Atlas*, 2 Hagg. 52.

(*o*) *The Royal Arch*, Swab. A. R. 269; see also *per Holt, C. J.*, in *Johnson v. Shippen*, 2 Ld. Raym. 983; *Ladbroke v. Crickett*, 2 T. R. 649; *The Jenny*, 2 W.

Rob. 5; and the judgment in *The Aline*, 1 W. Rob. 121.

(*p*) 3 & 4 Vict. c. 65, s. 4. See also the Admiralty Court Act, 1861 (24 Vict. c. 10), extending and defining the jurisdiction of the Court of Admiralty.

(*q*) *Place v. Potts*, 8 Ex. 705; 10 Ex. 370; 5 H. of L. Cases, 383; see also *In re Place*, 8 Ex. 704, where the Court of Exchequer refused, in the earlier stage of this case, to grant a writ of prohibition to the Admiralty Court.

(*r*) See the judgment of Sir J. Nicholl in *The Hersey*, 3 Hagg. 407; *The William F. Safford*, 1 Lush. A. R. 71. The precedence of seamen's wages exists whether they have been earned before or after the execution of the bond. *The Union*, 1 Lush. A. R. 128. Where a master has bound himself by the bond, he cannot claim precedence for his wages. *The Jonathan Goodhue*, Swab. A. R. 524. It is otherwise, however, where he has incurred no such personal obligation. *The Salacia*, 1 Lush. A. R. 578. The priority of a bottomry bond over other creditors exists, in ordinary cases, only during the voyage for which

the hypothecation of a homeward cargo at a foreign port, it was found that in order to make the cargo available either for the bond holders, or the owner, it was essential to carry it on, and accordingly it was transhipped and brought forward, it was held that the freight incurred by so doing, and also a claim for general average arising on the homeward voyage, were in the nature of salvage services, and were consequently entitled to priority over the claims of the bond holders (*s*).

Where there are several bond holders they are *inter se*, in the absence of special circumstances, entitled to priority in an inverse order, the last being paid first, as the last necessary loan saves the ship, and renders the other securities available (*t*).

The charterer may deduct from the freight which is payable to the holder of a bottomry bond a premium paid for the insurance of a part of the freight which was advanced before the bond was granted (*u*).

As a general rule, the Court gives costs to the bond holder establishing his right; but this rule is not inflexible, and will be varied to meet the justice of the case (*v*).

Where a vessel had been seized by Admiralty process, the master, who was also the owner, having executed in England an instrument under seal, purporting to be a bottomry security, and a decree had been made in the Admiralty Court for her sale, and between the seizure and decree a writ of *fi. fa.* was issued against the owner at the suit of another creditor, it was held that the sheriff could not take the vessel out of the possession of the Admiralty officer, or maintain trover against him (*x*).

it was executed, and the holder should enforce it within a reasonable time after the ship has arrived. If he fails to do this and enters into an agreement to postpone the payment until the completion of another voyage, his security under the bond and his right of proceeding in the Court of Admiralty cease. *The Royal Arch*, Swab. A. R. 269.

(*s*) *Cleary v. M'Andrew*, 11 W. R. 495.

(*t*) *The Betsey*, 1 Dods. 289; *The Sydney Cove*, 2 *ib.* 1; the judgments in *The Ereter*, 1 Rob. 177; and in *The Rhodamante*, 1 Dods. 204; and *The Priscilla*, Swab. A. R. 1. The rule of the French law is similar. The loans on the last voyage of the ship are pre-

ferred to those made on a former voyage, even although the later loans are expressed to be in continuation of the former. Money borrowed during the voyage is payable before money borrowed before the ship sailed; and in the case of several loans during the same voyage, the last has priority. See the Code de Comm. Art. 323.

(*u*) *The Catherine*, Swab. A. R. 263.

(*v*) *The Gauntlet*, 3 W. Rob. 167.

(*z*) *Ladbroke v. Crickett*, 2 T. R. 649.

The Court of Common Law refused also to enter into the question whether the Admiralty had any jurisdiction on such a bond, there being a sentence of that Court in force and not appealed against.

Where a vessel has been arrested in a cause of bottomry, and is in the custody of the Admiralty Court, no distress can be levied on her for a seaman's wages, under the summary powers given by s. 523 of the Merchant Shipping Act, 1854 (*y*).

Of Court of
Chancery.

The Court of Chancery has jurisdiction to give relief upon bottomry bonds; and where there has been fraud (*z*), or where enquiries arise on the contract, or equities attach to it which cannot be satisfactorily dealt with by the Court of Admiralty (*a*), it will restrain proceedings upon the bond in that Court.

SALE.

When master
may sell ship.

The principles which govern the right of the master to sell the ship are similar to those which have been mentioned as justifying an hypothecation; the two most important points to inquire into in each particular case are, whether the course pursued was absolutely necessary, and whether the master acted with *bona fides* in the transaction. In some of the earlier cases the right of the master to sell under any circumstances is denied (*b*); but it is now clearly settled that if the termination of the voyage is hopeless, and no prospect remains of bringing the vessel home, and nothing better can be done for his employers, the master may sell the ship for the benefit of all concerned (*c*). Where, indeed, the ship retains the character of a ship, and is capable of being used as such, with or without repairs, a sale is viewed by the Courts with suspicion (*d*); but if she is totally wrecked, or has received an irreparable injury in a foreign country, or at a place where there is no correspondent of the owner, and no money can be raised by hypothecation, it is not only the right but the duty of the master to sell (*e*).

(*y*) *The Westmoreland*, 2 W. Rob. 394. This was a decision upon s. 15 of the 7 & 8 Vict. c. 112.

(*z*) *Glascoth v. Lang*, 8 Sim. 358; 3 Myl. & Cr. 451; 2 Phill. 310; *Dobson v. Lyall*, 3 Myl. & Cr. 453, note; 2 Phill. 323, note.

(*a*) *Duncan v. M'Calmont*, 3 Beav. 409.
(*b*) *Tremenhere v. Tressilian*, 1 Sid. 453; *Johnson v. Shippen*, 2 Lord Raym. 982; *Reid v. Darby*, 10 East, 143; but see Jenk. Cent. p. 165.

(*c*) See the judgment in *Hunter v. Parker*, 7 M. & W. 342; and the judgments of Lord Stowell in *The Fanny and*

Elmira, Edw. 118, and of Lord Gifford, C. J., in *Robertson v. Clarke*, 1 Bing. 445.

(*d*) See the judgment in *Ireland v. Thomson*, 4 C. B. 168; see also *The Fanny and Elmira*, Edw. 117; *Read v. Bonham*, 3 B. & B. 147; *Somes v. Sugrue*, 4 C. & P. 276; *The Bonita*, and *The Charlotte*, 1 Lush. A. R. 252; and the cases cited *ante*, pp. 404, 405.

(*e*) See the judgments in *The Fanny and Elmira*, *ubi supra*, and *Ireland v. Thomson*, 4 C. B. 149; *Hayman v. Molton*, 5 Esp. 65; *Robertson v. Clarke*, 1 Bing. 445; *Hunter v. Parker*, 7 M. & W.

Where the master is justified in selling, the sale is valid against the owner, although it be without his express authority (f). The master may receive the proceeds of the sale himself, or he may, acting *bonâ fide*, order them to be paid to the owner's credit to a third person (g). If the sale is not justifiable no title to the ship passes, under ordinary circumstances, to the vendee; nor will his claim be, necessarily, strengthened by the fact of a foreign Court of Admiralty having decreed the sale upon the petition of the master (h). Where, however, a foreign Court of competent jurisdiction directs the sale of the ship and cargo under circumstances which, by the *lex loci*, confer a title upon an innocent purchaser, and pass the property, this sale will be upheld by our Courts, although no such necessity as is required by our law existed to justify the master in selling (i). Where an English ship was sold in France under a claim for necessities by a tribunal having jurisdiction *and proceeding in rem*, it was held by the Court of Exchequer Chamber that the sale passed the property in the ship, although the judgment of the French Court was founded upon an incorrect view of the English law (k).

Effect of sale abroad valid by the *lex loci*.

Where the owner, with a knowledge of the facts, received the proceeds of the sale, it was held that this was a ratification, on his part, of the act of the master, and that he could not afterwards recover back the ship from the vendee (l). Indeed, wherever there has been an acquiescence by the owner in the sale, however unauthorized it may have been originally, it will be deemed to be ratified (m). Mere expressions of approval, how-

322; *Idle v. The Royal Exchange Assurance Company*, 8 Taunt. 755; *Cambridge v. Anderton*, 2 B. & C. 691; *Lopraik v. Burrows*, 13 Moore, P. C. C. 132; *The Margaret Mitchell*, Swab. A. R. 382, and the cases cited *ante*, p. 405. See also Pritchard's Admiralty Digest, tit. OWNER.

(f) *The Glasgow*, Swab. A. R. 145.

(g) *Ireland v. Thomson*, 4 C. B. 149.

(h) *Ante*, p. 21.

(i) *Cammell v. Sewell*, 3 H. & N. 617; S. C., in Cam. Scacc., 5 H. & N. 728. In *The Eliza Cornish*, 1 Eccl. & Ad. R. 36, it was considered, that the validity of the sale abroad depended more upon the rules of the maritime law than upon the regulations of the *lex loci*, or of the English municipal law; but this view was disapproved of in the Exchequer

Chamber in *Cammell v. Sewell*, *ubi supra*.

(k) *Imrie v. Castrique*, 8 C. B., N. S. 405. The Court of Common Pleas had been of opinion in this case that the proceedings of the French Court were *in personam*. See S. C., 8 C. B., N. S. 1.

(l) *Hunter v. Parker*, 7 M. & W. 322.

(m) *Lopraik v. Burrows*, *ubi supra*. The Judicial Committee, in giving judgment in this case, said, "In all these cases we think it is the duty of the individual who has been divested of his property by means of the act of his own master, and who disapproves of that act, and considers his property to have been sacrificed, to act with the greatest possible promptitude in demanding that justice should be done to him (and for very plain and

ever, or even the acceptance of the purchase-money, will not operate as a ratification if the owner is at the time ignorant of the real facts relating to the sale (*n*).

It may be here observed, that the sale of a damaged ship by the master, although made *bonâ fide*, will not, as against the underwriter, convert a partial loss into a total loss, if the master could, by means within his reach, have preserved to her the character of a ship (*o*).

When master
may sell cargo.

The master may, in cases of absolute necessity, that is to say, where there is a total inability to carry the goods to their destination, sell a part or even the whole of the cargo; and such a sale transfers the property, and binds the owner of the goods (*p*). If, however, no such necessity exists, a sale by the master is wrongful, and the purchaser acquires no title under it unless it be made in market overt (*q*). The shipowner is also liable in such case in an action on the case, at the suit of the goods'

obvious reasons), because the greatest injustice might be done to the purchasers of vessels so circumstanced, unless means of enforcing the rights of the original owner are taken at an early period. Now, it is very true that delay may not destroy the right of a party to institute a suit; but when unnecessary delay arises, and when injury to others may result from that delay, that delay may import acquiescence in the sale."

(*n*) *The Bonita* and *The Charlotte*, 1 Lush. A. R. 252.

(*o*) *Gardner v. Salvador*, 1 M. & R. 116.

(*p*) See the judgments of Lord Stowell in *The Gratitude*, 3 Rob. 259, and of Bayley, J., in *Freeman v. The East India Company*, 5 B. & A. 621; the judgment in *Flierboom v. Chapman*, 13 M. & W. 239; *Underwood v. Robertson*, 4 Camp. 188, and *Cannan v. Meaburn*, 1 Bing. 248. In *Van Omeron v. Dowick*, 2 Camp. 42, the right to sell the whole of the cargo was denied. The right of the master to sell the cargo was much considered in *Tronson v. Dent*, 8 Moo. P. C. C. 419. Sir John Patteson there points out the difference between the sale of a ship and of her cargo. "It is a grave question," he says, "whether the master can in any case be justified in selling the cargo because the goods would be more damaged in the course

of conveying them from the place where he repairs his ship to the place of ultimate destination, than they have been already at the time he comes there. They may be damaged 10 per cent. at the place where he is obliged to put in, in order to repair his vessel, and it may be that they will be damaged 20 per cent. by the time they arrive at the place of destination, but it does not follow that he is at liberty to sell them on that account. If they are in such a state that he cannot convey them in the shape of merchantable goods to the place of their destination, and they would utterly perish when they arrived at their place of destination, that is quite another consideration." In *Cammell v. Sewell*, 3 H. & N. 617 (3 C., in Cam. Scacc., 5 H. & N. 728), the Court of Exchequer laid down the rule as to the right of the master to sell the cargo, in the following terms:—"A master is an agent to carry and convey, not to sell, and it is only in cases of absolute necessity that he can sell, either by the law of England or by the general maritime law."

(*q*) *Freeman v. The East India Company*, *ubi supra*; *Morris v. Robinson*, 3 B. & C. 196. Even if the sale is in market overt the purchaser acquires no title if he has notice of the circumstances under which it takes place. See *Freeman v. The East India Company*.

owner (r). And where the master sells without being justified in so doing, but is acting at the time within the general scope of his authority as master, both the shipowner and the master are liable in trover for the goods, notwithstanding the latter may have acted with perfect *bona fides* (s). It was held under one of the earlier statutes, which is now repealed, that the owners were not liable, where the sale was improper, beyond the value of the ship and freight, although the sale complained of had been made by one of them who was master as well as part owner (t). The effect of a sale by the master acting under the directions of a foreign Court, and conducted so as to pass the property by the *lex loci*, although no necessity for the sale exists according to the law of England, has been already mentioned (u).

If the master necessarily sells the goods at an intermediate port for repairs, and the ship afterwards arrives at her destination, the shipper may, at his option, claim from the shipowner either the price for which the goods actually sold (v), or the amount for which they would have sold at the port of discharge (w). If, however, the ship is lost on her voyage home, the shipper cannot claim the amount for which his goods would have sold if the ship had arrived (x). Whether, in this case, he is entitled to the price for which they actually sold has never been determined in our Courts (y).

Indemnity to owner of cargo on sale.

(r) *Cannon v. Meaburn*, 1 Bing. 243; *Wilson v. Millar*, 2 Stark. 1.

(s) *Eubank v. Nutting*, 7 C. B. 797.

(t) *Wilson v. Dickson*, 2 B. & A. 2. This was a decision on the 53 Geo. 3, c. 159. See *ante*, p. 49. Where the sale is necessary the statutes do not apply; see *Atkinson v. Stephens*, 7 Ex. 567.

(u) *Ante*, p. 445.

(v) *Richardson v. Nourse*, 3 B. & A. 237; *Campbell v. Thompson*, 1 Stark. 490; *The Salacia*, 1 Lush. A. R. 578.

(w) *Alers v. Tobin*, Abbott on Ship. (10th edit.) 279; *Hallett v. Wigram*, 19 L. J., C. P. 281.

(x) *Atkinson v. Stephens*, *ubi supra*.

(y) Lord Tenterden was of opinion that under these circumstances the owner of the goods could make no claim, since he ought not to be in a better position than if the goods had not been sold. See Abbott on Ship. (10th edit.) 279, and the foreign authorities cited there.

CHAPTER IX.

COLLISION.

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GENERAL
REGULATIONS
AS TO NAVI-
GATION AND
LIGHTS FOR
THE PURPOSE
OF PREVENT-
ING COLLI-
SIONS.

NUMEROUS regulations have, from time to time, been established by statute, rule, or general usage, for the purpose of preventing collisions at sea. It is the duty of all masters and crews carefully to observe these rules; and if a collision takes place, and the master or crew of either vessel has neglected to obey them,

the owners and master of that vessel will usually be liable for the damage which happens (*a*).

The Merchant Shipping Act, 1854, provides, by sect. 328, that in every case of collision, in which it is practicable so to do, the master must, immediately after the occurrence, cause a statement of it, and of the circumstances under which it occurred, to be entered in the official log-book, which entry is to be signed by the master, and also by the mate or one of the crew, subject to a penalty not exceeding 20*l*.

It is an acknowledged rule of sailing, and one which, although originally suggested by convenience only, has been often recognized by Courts of law, that if a vessel is going close hauled to the wind, and another, meeting her, is going free, the latter must go to leeward; for otherwise the vessel going to windward would lose her position (*b*). On the same principle, vessels having the wind fair must give way to those sailing by or against the wind (*c*). It is also a rule, that when both ships are going by the wind, the vessel on the starboard tack must keep her wind, and the one on the larboard tack bear up, thereby passing each other on the larboard hand; and that when both vessels have the wind large or a-beam, and meet, they must pass each other in the same way on the larboard hand (*d*). For a vessel on her port tack is bound to give way to a vessel on her starboard tack, and if there is any danger of collision to port her helm and go to leeward of the other ship, which should keep her course (*e*). And a vessel in motion is bound to steer clear, if possible, of a vessel at her moorings, whether properly or improperly anchored (*f*).

General rules
of sailing.

The sailing rules mentioned above do not relate to steamers. Regulations of a similar kind have, however, been made from time to time for the guidance of steam vessels. Thus, an order

Trinity House
rules as to
steamers.

(*a*) See the cases cited below and s. 29 of the M. S. A. Amendment Act, 1862.

(*b*) *Handaysyde v. Wilson*, 3 C. & P. 528; *Fennell v. Garner*, 1 C. & M. 21; *Sills v. Brown*, 9 C. & P. 601; *The Dumfries*, Swab. A. R. 125; *The Saxonia*, *The Eclipse*, 1 Lush. A. R. 410.

(*c*) *Jameson v. Drinkald*, 12 Moo. P. C. C. 148; *Williams v. Gutch*, 14 Moo. P. C. C. 202.

(*d*) See as to the application of this rule, *The Jupiter*, 3 Hagg. 320. It does not apply if the heads of the vessels are not in opposite, but only in different directions. *The London Packet*, 2 Notes of Cases, 501.

(*e*) *Zugasti v. Lamer*, 12 Moo. P. C. C. 331.

(*f*) See the judgment in *The Girolamo*, 3 Hagg. 173; *The Batavier*, 4 Notes of Cases, 346.

of the Trinity House which was issued on the 30th October, 1840, after stating that steam vessels might be considered as vessels navigating with a fair wind, directed that when steam vessels were on different courses, and must unavoidably or necessarily cross so near to each other that, by continuing their respective courses, there would be a risk of collision, each vessel should put her helm to port, so as always to pass on the larboard side of each other; and that a steam vessel passing another in a narrow channel should always leave the vessel she was passing on the larboard hand (*g*).

General rules
as to lights.

Another important means of preventing collisions between vessels is the exhibiting of proper lights at night.

Independently of any statutory regulations it is usually the duty of vessels to exhibit a light when either moving or stationary at night in any place in which it is probable that other vessels may pass. Where, therefore, a ship lying at anchor at night in a track which was much frequented, showed no lights, and was run into and injured by another vessel, it was held that, by reason of this negligence, the owners could not recover for the injuries done to her (*h*).

These general rules as to sailing and lights were practically superseded by the Merchant Shipping Act, 1854.

STATUTORY
PROVISIONS
FOR THE PUR-
POSE OF PRE-
VENTING COL-
LISIONS.

By sects. 296 and 297 of this act, fuller regulations with reference to the navigation of sailing ships and steamers were laid down; and by sect. 295, the Commissioners of the Admiralty were empowered from time to time to make regulations requiring the exhibition of lights and the use of fog signals by any classes of ships (whether steam or sailing ships) within such places, and under such circumstances, as they might think fit.

The power thus given to the Commissioners of the Admiralty was exercised by an order dated the 24th February, 1858 (*i*).

(*g*) See as to the construction of this order the judgment of Dr. Lushington in *The Friends*, 1 W. Rob. 484. The Court of Admiralty appears to have considered that the custom of particular rivers interfering with this rule was superseded by it, *ib.*; and *The Duke of Sussex*, 1 W. Rob. 275; see also *The Unity*, Swab. A. R. 101. In *The General Steam Navigation Company v. Tonkin*, 4 Moo. P. C. C. 314, and *The Hope*,

1 W. Rob. 157, it was held, that the rules mentioned above were not to be pertinaciously adhered to where such a course would lead to a collision instead of preventing one.

(*h*) *The Victoria*, 3 W. Rob. 49.

(*i*) This order, which is now repealed, will be found in the 2nd edition of this work, p. 402, and in Swab. A. R. App. p. vi. See also a notice of the Admiralty, dated 26th October, 1858,

By sect. 25 of the Merchant Shipping Act Amendment Act, 1862, however, the provisions of the Merchant Shipping Act, 1854, as to navigation, lights and signals were repealed; and it was provided that certain new regulations on this subject which were contained in the schedule of the first-mentioned act, or any regulations which might be substituted for them by Order in Council, should come into force on the 1st June, 1863 (*j*).

After the passing of the Merchant Shipping Act Amendment Act, 1862, a set of regulations as to lights, signals and navigation, differing slightly from the rules contained in its schedule, was issued under an Order in Council, dated the 9th January, 1863; and these rules are now in force (*k*).

The copy of these regulations, published by the Board of Trade on the 17th September, 1863, is in the following terms:—

Notice.

- (1.) By virtue of the Merchant Shipping Act Amendment Act, 1862, and of an Order in Council, dated 9th January, 1863, the following regulations containing certain verbal amendments, are substituted for the regulations contained in the schedule to the act.
- (2.) The following regulations came into operation on the 1st June, 1863.
- (3.) The following regulations apply to all ships, whatever their nationality, within the limits of British jurisdiction; and to British and French ships, whether within British jurisdiction or not.
- (4.) They also apply to ships belonging to the following countries and places, whether within British jurisdiction or not; (here follows a list of countries and places (*l*)). The governments of the countries and places named above have already notified their acquiescence. Other governments are expected to follow.

exempting open and fishing boats from the requirements of the order of the 24th February, 1858, and *The Olivia*, 1 Lush. A. R. 497. Regulations as to the coloured vanes to be carried by day, and as to the lights to be carried by night, by British and French fishing boats, in pursuance of a convention entered into by Great Britain and France, will be found in the 6 & 7 Vict. c. 79. See also Pritchard's Adm. Digest, 197, where the cases on this

subject are carefully collected.

(*j*) M. S. A. Amendment Act, 1862, s. 25, and Schedule, Table (C).

(*k*) A copy of these regulations, with the diagrams as to lights annexed, will be found *post*, App. p. cclxxxiv. At the same place will be found a French translation, published under the authority of the French Government. These rules had been published also at an earlier date.

(*l*) See this list *post*, App. p. cclxxxiv.

- (5.) The French copy of the regulations in the following pages is reprinted from the French version, as published in France, under the authority of the French Government.

Board of Trade,
17th September, 1863.

Preliminary.

Art. 1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Art. 2. The lights mentioned in the following articles, numbered 3, 4, 5, 6, 7, 8, and 9, and no others, shall be carried in all weathers, from sunset to sunrise.

Art. 3. Sea-going steam ships when under weigh shall carry :—

Rules as to
lights and fog
signals.

- (a.) *At the Foremast Head*, a bright (1) white light, so fixed as to show an uniform and unbroken light over an arc of the horizon of 20 points of the compass; so fixed as to throw the light 10 points on each side of the ship, viz., from right ahead to 2 points abaft the beam on either side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles.
- (b.) *On the Starboard Side*, a green light so constructed as to throw an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.
- (c.) *On the Port Side*, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of 10 points of the compass; so fixed as to throw the light from right ahead to 2 points abaft the beam

(1) It has been regretted that no definition has been given in any of these regulations of a "bright light."

See the judgment in *Mackay v. Roberts*, 9 Moo. P. C. C. 357.

on the port side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles.

- (d.) The said green and red side lights shall be fitted with inboard screens, projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Art. 4. Steam ships, when towing other ships, shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam ships. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam ships are required to carry.

Art. 5. Sailing ships under weigh, or being towed, shall carry the same lights as steam ships under weigh, with the exception of the white mast-head lights, which they shall never carry.

Art. 6. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck, on their respective sides of the vessel, ready for instant exhibition; and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

Art. 7. Ships, whether steam ships or sailing ships, when at anchor in roadsteads or fairways, shall exhibit, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light, in a globular lantern of eight inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all round the horizon, and at a distance of at least one mile.

Art. 8. Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the mast-head, visible all round the horizon,—and shall also exhibit a flare-up light every fifteen minutes.

Art. 9. Open fishing boats and other open boats shall not be

required to carry the side lights required for other vessels ; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side ; and on the approach of or to other vessels, such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side, nor the red light on the starboard side.

Fishing vessels and open boats when at anchor, or attached to their nets and stationary, shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition, if considered expedient.

Rules concerning Fog Signals.

Art. 10. Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes ; viz. :—

- (a.) Steam ships under weigh shall use a steam whistle placed before the funnel, not less than eight feet from the deck.
- (b.) Sailing ships under weigh shall use a fog horn.
- (c.) Steam ships and sailing ships when not under weigh shall use a bell.

Steering and Sailing Rules.

Steering and sailing rules.

Art. 11. If two sailing ships are meeting end on or nearly end on so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other (m).

Art. 12. When two sailing ships are crossing so as to involve risk of collision, then, if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side ; except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way ; but if they have the wind on the same side, or if one of them has the wind aft, the ship which

(m) See as to the meaning of the term "meeting" the observations of Dr. Lushington in *The Cleopatra*, Swab. A. R. 136, on this word as used in s. 296 of the M. S. Act, 1854.

Smith v. Voss, 2 H. & N. 97, is a decision upon a provision of this act, with reference to navigation, which has not been inserted in the rules now in force.

is to windward shall keep out of the way of the ship which is to leeward (n).

Art. 13. If two ships under steam are meeting end on or nearly end on so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Art. 14. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Art. 15. If two ships, one of which is a sailing ship, and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

Art. 16. Every steam ship, when approaching another ship, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam ship shall, when in a fog, go at a moderate speed.

Art. 17. Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following article.

Art. 19. In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

Art. 20. Nothing in these rules shall exonerate any ship, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

(n) See the following cases, decided upon s. 296 of the M. S. Act, 1854, and which are applicable in some respects to the regulations now in force. *The James*, Swab. A. R. 60; *S. C.*, on appeal, *nom. Lawson v. Carr*, 10 Moo. P. C. C. 162; *Maddox v. Fisher*, 14 Moo. P. C. C. 103; *The Inflexible*, Swab. A. R.

32; *The Ericsson*, *ib.* 38; *The Joseph Some*, *ib.* 185; and *Chadwick v. The Dublin Steam Packet Company*, 6 E. & B. 771. The following acts, now repealed, contained some provisions of the same kind, the 9 & 10 Vict. c. 100, and the 14 & 15 Vict. c. 70.

By sect. 27 of the Merchant Shipping Act Amendment Act, 1862, all owners and masters are bound to take notice of these rules and to obey them, and not to exhibit any other lights or use any other fog signals. In case of wilful default the master (or the owner if it appear that he was in fault) is guilty of a misdemeanor (*o*).

These regulations have the force of an act of parliament, and should be strictly observed (*p*). We shall see in a later part of this Chapter that the owners of vessels in which they are disregarded cannot recover in respect of any collision caused by this disobedience, unless circumstances existed which made the departure from the rule necessary (*q*).

Vessels should act towards each other with respect to the above rules upon the presumption that they will be properly observed (*r*). The expression "close-hauled" is not confined to vessels which are sailing as close as possible to the wind, but it is for the jury in each case to say whether the ship was so close-hauled that by porting her helm she could not be kept under command, although she might otherwise be put nearer the wind (*s*).

(*o*) By s. 26 of the M. S. A. Amendment Act, 1862, the Board of Trade is bound to print these regulations and to furnish a copy to any owner or master applying for it; and they are proveable by the production of a copy signed by a secretary of the Board, or sealed with its seal.

(*p*) *Valentine v. Cleugh*, 8 Moo. P. C. C. 167, which was a decision upon the Admiralty rules made under the 14 & 15 Vict. c. 79. In this case the light of a sailing vessel at anchor had been placed on the mizen rigging instead of at the mast-head, as required by the regulation, and the Court of Admiralty being of opinion that the light was more visible in this position than at the mast-head, had decided that there had been a substantial compliance with the rule. In the Privy Council, however, this decision was reversed, that Court holding that there had been a non-observance of the statutory rule, and that the collision had been caused thereby. See also *Morgan v. Sim*, 11 Moo. P. C. C. 307; *The Vivid*, Swab. A. R. 88; *S. C.*, on appeal, *nom. Churchyard v. Palmer*, 10 Moo. P. C. C. 472, in which case the Admiralty rule as to lights had not been strictly complied with, but the collision had not been caused by the breach of the regulation. The follow-

ing cases which were decided upon the earlier Admiralty regulations made under the 14 & 15 Vict. c. 79, which differed in some respects from the rules which are now in force, may be usefully referred to. *The General Steam Navigation Company v. Morrison*, 13 C. B. 581; *Dowell v. The General Steam Navigation Company*, 5 E. & B. 195; *The General Steam Navigation Company v. Mann*, 14 C. B. 127, and *Morrison v. The General Steam Navigation Company*, 8 Ex. 733. The statutory provisions in force for preventing the exhibition of false lights on shore, will be found *post*, p. 475.

(*q*) M. S. A. Amendment Act, 1862, ss. 28, 29, and see *post*, p. 463.

(*r*) *The Mangerton*, 2 Jur., N. S. 620; *The Dumfries*, Swab. A. R. 63; *S. C.*, on appeal, *nom. Thompson v. From*, *ib.* 125, and 10 Moo. P. C. C. 461. These were decisions upon the M. S. Act, 1854.

(*s*) *Chadwick v. The City of Dublin Steam Packet Company*, 6 E. & B. 771, decided on s. 296 of the M. S. Act, 1854. This act contained a regulation as to the navigation of steam vessels in rivers or narrow channels. This regulation was held in the Privy Council to be applicable, under ordinary circumstances, to vessels in tow. *The La Plata*,

It was held by the Court of Admiralty that the earlier statutory regulations as to navigation, lights and signals, did not apply to foreign ships on the high seas, nor to British ships which came into collision with foreign ships on the high seas, and that in such cases the question of negligence was to be governed by the general maritime law (*t*). Foreign ships.

We have seen, however, that the regulations now in force are, by their terms, intended to apply to all ships whatever their nationality when within British jurisdiction, and to British and French ships, and the ships of some other nations, when within that jurisdiction or not (*u*); and by the Merchant Shipping Act Amendment Act, 1862, s. 57, it is provided that, whenever foreign ships are within British jurisdiction, the regulations for preventing collision which are for the time being in force under that act, and all provisions of that act relating to these regulations, or otherwise relating to collisions, shall apply to such foreign ships; and that in any cases arising in any British Court of justice concerning matters happening within British jurisdiction, foreign ships are, so far as regards these regulations and provisions, to be treated as if they were British ships.

And further, sect. 58 of that act provides that whenever it is made to appear to the Queen that the government of any foreign country is willing that these regulations for preventing collision, or any of them, or any provisions of the act relating to collisions, should apply to the ships of that country when beyond the limits of British jurisdiction, the Queen may, by Order in Council, direct that these regulations, and all the provisions of the act which relate to them, and all such other provisions, shall apply to the ships of the foreign country, whether within British jurisdiction or not (*x*).

Swab. A. R. 220, 298. A custom by which the navigation of a particular river is regulated cannot be set up as an excuse for disobeying these statutory rules. *The Unity*, Swab. A. R. 101; *The Hand of Providence*, Swab. A. R. 107, decisions under the M. S. Act, 1854. See also *ante*, p. 450, note (*g*).

(*t*) *The Dumfries*, Swab. A. R. 63; *Thompson v. From*, 10 Moore, P. C. C. 461; *The Zollverein*, Swab. A. R. 96; *The Saxonian and The Eclipse*, 1 Lush. A. R. 410; *Williams v. Gutch*, 14 Moore, P. C. C. 202; and *The Wild Ranger*, 32 L. J., P. M. & A. 49, adopting the principles acted upon in *The Nostra Signora De los Dolores*, 1 Dods. 290. See also *Cope v. Doherty*, 4 K. & J. 367. In *Stevens*

v. Gourley, 14 Moore, P. C. C. 92, it appears to have been considered that, although a foreign vessel was governed only by the rule of the sea, a British ship in tow of a steam tug, meeting a foreign ship at night, was governed by the rules applicable to British ships. In *The Amalia*, 32 L. J., P. M. & A. 191, it was held in the Privy Council, that the provisions of s. 54 of the M. S. A. Amendment Act, 1862, apply to a case of collision between a British and foreign ship on the high seas.

(*u*) *Ante*, p. 451.

(*x*) As to the effect of such an Order in Council, its publication, alteration and revocation, and as to the mode of proving it, see the M. S. A. Amendment

Inspection of
ships as to
lights, &c.

In order to enforce compliance with the above regulations, the Merchant Shipping Act Amendment Act, 1862, provides, by sect. 30, that surveyors or other persons appointed by the Board of Trade may inspect any ship for the purpose of seeing that she is properly provided with lights and signals; and that if the surveyor finds that she is not properly provided in these respects, he shall give notice in writing to the master or owner, pointing out the deficiency, and also what, in his opinion, is requisite in order to remedy it. Every notice so given must be communicated to the collector of customs at any port from which the ship seeks to clear, or at which her transire is to be obtained, and no collector of customs to whom such a communication has been made may clear out the ship or grant her a transire, without a certificate signed by one of the surveyors that she is properly provided with lights and signals in pursuance of these regulations.

Sect. 31 of the Merchant Shipping Act Amendment Act, 1862, contains provisions with reference to lights and signals to be carried by vessels navigating the waters of harbours, rivers, and other inland navigations, which will be mentioned in a later part of this Chapter (*y*).

PARTIES
LIABLE IN
RESPECT OF
COLLISION.
Shipowners
and charterers.

The shipowners are liable for the negligent and improper acts of the master and crew whilst acting within the scope of their employment (*z*). Where a vessel is chartered the liability of the shipowner, in respect of a collision caused by the tortious or negligent acts of the crew, depends upon whether or not they can be considered to be his servants. Where the shipowner provides the vessel only, and the crew is selected by the charterer, the latter alone is responsible for their acts (*a*). But if the shipowner provides not merely the vessel but also the crew, and the charter-party shows that, although he has parted with the possession of the ship, she is still under his control and navigated by a master and sailors appointed by him, although paid by the charterer, the owner is liable (*b*). On the same

Act, 1862, ss. 61—64. For a list of foreign countries which have adopted these regulations and the dates of the *Gazettes* containing the Orders in Council, see *post*, App., p. cclxxxiv.

(*y*) See *post*, p. 475.

(*z*) See the cases cited below, and *ante*, p. 174. See as to proceedings

against foreign owners under the M. S. Act, 1854, s. 527, *post*, p. 461.

(*a*) *Scott v. Scott*, 2 Stark. 348.

(*b*) *Fenton v. The Dublin Steam Packet Company*, 8 A. & E. 835. The Court abstained from saying, that because the owner was liable the charterer was not. Indeed it appears to have thought that

principle, where the lessee of a ferry hired a steamer with a crew to ply to and fro, and a passenger, whilst on board, was injured by the breaking of a rope, through the negligence of the crew, it was held that the crew remained the servants of the ship-owners, and that the latter were, therefore, liable to the passenger (c). In an earlier case (d), where an injury arose from the negligence of a crew who were paid by the owners, it was held that the latter were liable, although the ship was chartered to the Commissioners of the Navy as an armed vessel, and a commander of the Navy and a King's pilot were on board at the time of the collision.

The owners of a transport employed by government are not, however, liable for damage which she does by a collision which occurs in consequence of obedience to the orders of a Queen's officer under whose command she is, there being no negligence on their part (e).

Where it was proved that the barge which did the damage belonged to the defendant, but the bargeman could not be identified, it was held that this was *prima facie* evidence that it was steered by the defendant's servants; and that if it was on hire, or in the employment of any other person, it lay upon the defendant to prove the fact (f).

Masters are liable both to their owners and to third persons **Masters.** in respect of collisions caused by their negligence or miscon-

the latter was also liable; nor is there any inconsistency in this view. The charterer may be liable if he has interfered in the navigation of the vessel, and so for the time made the crew his agents; and yet the person whose ship is injured, and who can rarely be aware of the nature of the contract between the charterer and the owner, may be entitled to resort to compensation to the latter, whose agents the crew usually are. See the judgments in *Laugher v. Pointer*, 5 B. & C. 547, *Quarman v. Burnett*, 6 M. & W. 499, and *McLaughlin v. Prior*, 4 M. & Gr. 48, which were cases of collision by carriages; and *Martin v. Temperley*, 4 Q. B. 298.

(c) *Dalyell v. Tyrer*, 1 E., B. & E. 899. In this case the crew were paid by the defendants.

(d) *Fletcher v. Braddick*, 2 N. R. 182. One of the terms of the charter-party

in this case was, that the master should strictly observe and execute all such orders and instructions as he should from time to time receive from the officer who should be appointed to command the vessel. Lord Mansfield observed, that it was doubtful whether this provision meant "that the officer should see to the navigation and direct the motions of the ship, or only direct to what place the ship should be carried for the purpose of being employed against the enemy. The true justice of the case is, that if any injury happens through the misconduct of the master and crew, the owners should be liable, but if by the misconduct of the officer, the officer should be liable. But how is a third person to ascertain the fact?"

(e) *Hodgkinson v. Fernie*, 2 C. B., N. S. 415.

(f) *Joyce v. Capel*, 8 C. & P. 370.

duct (*g*). They may be sued at law, or proceeded against in the Court of Admiralty (*h*).

Effect of Pilot Acts on liability of owners, masters and pilots.

When a collision takes place within a district in which vessels are bound to be provided with a licensed pilot, the liability of the master and owners is usually limited by the particular Pilot Act which relates to the locality. The effect of the existing acts on the liability of owners, masters and pilots has been considered in an earlier Chapter (*i*).

Steam tugs.

Where a vessel is being towed by a tug steamer the vessel and the tug are to be treated, so far as relates to these questions, as one ship, for the conduct of which the vessel towed is responsible (*j*). It is scarcely necessary to add, that, where damage is done by a ship whilst in tow of a steamer, the owners of the ship cannot set up as a defence, that by their charter-party they were obliged to obey orders, or to put the ship in tow of the steamer (*k*).

Officers of Queen's ships.

The superior officer of a Queen's ship is not responsible for damage caused by the act of an officer under his command, but appointed by the same authority as himself. It is a general principle, which has been acted upon on several occasions in the Court of Admiralty, that in cases of tort (*l*) or damage done by vessels of the Crown the legal responsibility rests with the actual wrongdoer, and the injured party must seek redress from the person who immediately causes the injury (*m*). The commanders of Queen's ships have, however, in some cases, been condemned in causes of damage, where the collision has appeared to be the result of negligence in the management of their

(*g*) *Ante*, p. 114.

(*h*) See the judgment in *The Volant*, 1 W. Rob. 387.

(*i*) See *ante*, pp. 220, 221.

(*j*) *Stevens v. Gourley*, 14 Moore, P. C. C. 92; *S. C.*, 1 Lush. A. R. 158; see also as to what is evidence of negligence in these cases, *Harris v. Anderson*, 14 C. B., N. S. 499.

(*k*) *The Ticonderoga*, Swab. A. R. 215.

(*l*) *Nicholson v. Mounsey*, 15 East, 384. Public officers are responsible for their own acts and negligence, but are not usually liable for the misfeasance and negligence of the subordinate

officers under them. The maxim *respondet superior* does not apply to these cases. See Story on Agency, sects. 319, 321, 322, and the judgment in *Hall v. Smith*, 2 Bing. 158.

(*m*) See *The Mentor*, 1 Rob. 179; and the judgment in *The Athol*, 1 W. Rob. 381. The M. S. Act, 1854, s. 104, protects officers from liability in respect of the seizure or detention of any ship for supposed offences against the regulations of the statute with reference to the assumption of the character of British ships, where the seizure or detention was made upon reasonable grounds.

vessels, although there was no direct personal interference on their part (*n*).

The remedy in a Court of law for damage by collision is an action of trespass or case: trespass lies if the injury is wilful or direct; case, if it is negligent or indirect, or is committed by an agent (*o*).

RIGHTS AND
REMEDIES IN
COURTS OF
COMMON LAW.

All the part owners of a ship should join in actions for any damage done to her by collision. The nonjoinder of all the owners may be objected to by notice or by plea in abatement. The Courts have, however, now extensive powers of amendment in cases of nonjoinder and misjoinder (*p*). If one of several part owners dies after the ship has sustained an injury, the action must be brought in the names of the survivors (*q*).

Action.

Where damage is done by a foreign ship she may be arrested before action, and security for the damages and costs may be obtained. By the Merchant Shipping Act, 1854, sect. 527, whenever any injury has, in any part of the world, been caused to any property belonging to the Queen or any of her subjects by any foreign ship, if at any time thereafter the ship is found in any port or river of the United Kingdom, or within three miles of the coast, the judge of any Court of Record in the United Kingdom, or the judge of the High Court of Admiralty, or, in Scotland, of the Court of Session, or the sheriff of the county within whose jurisdiction the ship may be, may upon its being shown to him by any person applying summarily that the injury was probably caused by the misconduct or want of skill of the master or mariners of the foreign ship, issue an order directed to any officer of Customs or other officer, requiring him to detain the ship until the owner, master, or consignee has made satisfaction in respect of the injury, or has given security, to be approved by the judge, to abide the event of any action, suit, or other legal proceeding that may be instituted in respect of it, and to pay all costs and damages that may be awarded; and

Power to arrest
foreign ships
under Mer-
chant Shipping
Act, 1854.

(*n*) See *The Volcano*, 2 W. Rob. 337; *The Birkenhead*, 3 ib. 75.

(*o*) *Ogle v. Barnes*, 8 T. R. 188; *Huggett v. Montgomery*, 2 N. R. 446; *Sharrod v. The London and North Western*

Railway, 4 Ex. 500.

(*p*) See *ante*, p. 80, and the 15 & 16 Vict. c. 76, ss. 34, 36.

(*q*) *Ante*, p. 72.

any officer of Customs or other officer to whom such an order is directed must detain the ship accordingly.

By sect. 528, where it appears that before any application can be made under the above section the foreign ship will have departed beyond the limits mentioned in it, any commissioned officer on full pay in the military or naval service of the Queen, or any British officer of Customs, or any British consular officer, may detain the ship until such time as will allow the application to be made and the result of it to be communicated to him. The officer is not liable for any costs or damages in respect of this detention unless it is proved to have been made without reasonable grounds.

By sect. 529, in any action, suit, or other proceeding in relation to injuries of this kind, the person giving security is to be made defendant, and must be stated to be the owner of the ship that has occasioned the damage; and the production of the order of the judge made in relation to the security is conclusive evidence of the liability of the defendant to such action.

Effect of negligence on part of plaintiff on right to recover.

The *onus probandi* lies in all cases upon the party seeking to recover compensation for damage caused by a collision, and he must establish that the loss was attributable to the default of the person sued (*r*). The plaintiff is usually entitled to succeed if he shows that the injury of which he complains was occasioned by the improper or negligent conduct of the defendant or his servants. But if it appear that the plaintiff or his agents were guilty of negligence which *substantially contributed to the injury*, he cannot recover, although the defendant or his agents may have also acted negligently. It is not, however, every act of negligence on the part of the plaintiff which will preclude him from recovering; he is entitled to recover although he may have been negligent, unless he might, *by the exercise of ordinary care*, have avoided the consequences of the defendant's negligence (*s*).

(*r*) *Morgan v. Sim*, 11 Moo. P. C. C. 307.

(*s*) *Vanderplank v. Miller*, M. & M. 169; *Vennall v. Garner*, 1 C. & M. 21; *Lack v. Seward*, 4 C. & P. 106; *Luxford v. Large*, 5 C. & P. 421; *Sills v. Brown*, 9 C. & P. 601; *Bridge v. The Grand Junction Railway*, 3 M. & W. 244; *Davies v. Mann*, 10 M. & W. 546; *Clay-*

ards v. Dethick, 12 Q. B. 439; *Rigby v. Hewitt*, 5 Ex. 240; *Greenland v. Chapman*, *ib.* 243; and *Thompson v. The North Eastern Railway Company*, 2 B. & S. 106; S. C. in Cam. Scacc., *ib.* 119. See also the judgments in *The Mayor of Colchester v. Brooke*, 7 Q. B. 377, and *Dowell v. The General Steam Navigation Company*, 5 E. & B. 195, *Carwell v.*

This rule has been applied to such an extreme extent that it has been considered that a passenger who selects a particular vessel so far identifies himself with the owners of it, that he cannot recover for an injury caused by the negligent collision of another vessel, if those who have the control of the vessel in which he is have also been guilty of negligence substantially conducing to the accident (*t*).

The question whether there has been negligence or want of skill is for the jury. Nautical witnesses who did not see the collision may be asked what is the duty of persons at sea, under particular circumstances, but they cannot be asked their opinion on the facts given in evidence, for this would be an infringement upon the province of the jury (*u*). It is always very material, in enquiring into the question of negligence, to consider whether the customary rules of navigation which have been already referred to (*x*), have or have not been observed.

There are some important statutory provisions relating to this subject. By sect. 28 of the Merchant Shipping Act Amendment Act, 1862, in case any damage to person or property arises from the non-observance by any ship of any regulation made by or in pursuance of the act, the damage is to be deemed to have been occasioned by the wilful default of the person in charge of the deck of the ship at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary.

Where collision occasioned by breach of statutory rules as to sailing or lights.

And by sect. 29 of this act, if in any case of collision it appears to the Court before which the case is tried that the collision was occasioned by the non-observance of any regulation made by or in pursuance of the act, the ship by which

Worth, *ib.* 489, where the same principle was acted on; and *Tuff v. Warman*, 2 C. B., N. S. 740; *S. G.* in *Cam. Scacc.*, 5 C. B., N. S. 572.

(*t*) *Thorogood v. Bryan*, and *Catlin v. Hills*, 8 C. B. 115. See also the observations on this rule in the notes to 1 Smith, L. C. 254 (5th ed.). In *The Milan*, 1 Lush. A. R. 388, Dr. Lushington refused to act upon the principle of these cases, which are directly opposed to *Hay v. Le Neve*, 2 Shaw's Scotch App. Cases, 395. In *Bland v. Ross*, 14 Moore, P. C. C. 210, it was

held that the rule did not apply to the case of a towage contract.

(*u*) *Sills v. Brown*, 9 C. & P. 601. See *Malton v. Nesbit*, 1 C. & P. 70. In this case, which was an action for negligently navigating a ship, whereby she was wrecked, and the plaintiff lost his passage in her, it was held that evidence of specific acts of negligence on the part of the master and crew, unconnected with the matter complained of, was not admissible.

(*x*) *Ante*, p. 449.

the regulation has been infringed is to be deemed to be in fault (*y*), unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary (*z*).

Duty of ships
to assist each
other in cases
of collision.

In addition to the above provisions, the Merchant Shipping Act Amendment Act, 1862, provides, by sect. 33, that in every case of collision between two ships it shall be the duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew and passengers, such assistance as may be practicable, and as may be necessary, in order to save them from any danger caused by the collision; and that in case he fails so to do, and no reasonable excuse for such failure is shown, the collision is, in the absence of proof to the contrary, to be deemed to have been caused by his wrongful act, neglect or default (*a*); and such failure is also, if proved upon any investigation held under the third or the eighth part of the Merchant Shipping Act, 1854, to be deemed to be an act of misconduct, or a default, for which his certificate may be cancelled or suspended.

The following cases decided upon the earlier acts, and regulations, will show the application in substance of the existing rules.

It was held that the earlier provisions did not affect the general rules of law which have been already mentioned with reference to the effect of negligence on the right to recover (*b*). Where, therefore, a vessel having no light such as was required by the then existing Admiralty regulations, was injured by another ship through sheer carelessness, it was held that the owner of the injured ship might recover; the absence of the light not having in any way contributed to the collision (*c*).

(*y*) The Court of Admiralty has refused to consider the negligent navigation of a carrying vessel to be the negligence of the owner of the cargo. See *The Milan*, 1 Lush. A. R. 388, a decision upon s. 298 of the M. S. Act, 1854.

(*z*) These sections are substituted for ss. 298 and 299 of the M. S. Act, 1854, which are repealed by the M. S. A. Amendment Act, 1862; see s. 2 and Schedule, Table (A.) See also *The Juliana*, Swab. A. R. 20, a decision on

the earlier act.

(*a*) See, as to this provision, *The Queen of the Orwell*, 11 W. R. 499.

(*b*) *Tuff v. Warman*, 2 C. B., N. S. 740; *S. C.*, in Cam. Scacc., 5 C. B., N. S. 572.

(*c*) *Morrison v. The General Steam Navigation Company*, 8 Ex. 733; this case was decided upon the 14 & 15 Vict. c. 79, and the rules made under that act. See also *The Commerce*, 3 W. Rob. 287; *The Panther*, 15 Jur. 1037; *Dowell v. The General Steam Navigation Com-*

Where, however, the plaintiff's vessel, by improper management, or by neglecting to observe the then Admiralty rules, directly contributed to the accident, it was held that the defendant was not liable, however much he might also be in fault (*d*). Where both the vessels had failed to observe the rules as to lights, it was considered that neither could recover against the other (*e*). And the fact of its being a clear moonlight night has been held not to relieve a vessel from compliance with the rules as to lights (*f*).

The provisions of the Merchant Shipping Act Amendment Act, 1862, and of the earlier acts, which limit the liability of the owners of sea-going ships in respect of injuries to life and property which occur without their actual default or privity, have already been fully mentioned in an earlier Chapter (*g*). Subject to these statutory provisions, the damages which the owner of the injured vessel is entitled to recover are estimated in the same manner as in other actions of a like nature. They are not limited to compensation for the immediate effects of the injury inflicted (*h*).

Limitation of owner's liability.

Measure of damages.

A defendant, in an action of collision, is not entitled to deduct from the amount of the damages a sum which the plaintiff has received from an underwriter on account of the same injury; for a wrong-doer cannot claim the benefit of a contract of insurance effected by the person whose property he has injured (*i*).

pamy, 5 E. & B. 195, and the cases cited *ante*, p. 456, note (*p*), and *Lawson v. Carr*, 10 Moo. P. C. C. 162.

(*d*) *Dowell v. The General Steam Navigation Company*, 5 E. & B. 195. This case was decided under the rules made in pursuance of the 14 & 15 Vict. c. 79.

(*e*) *The Aliwal*, 18 Jur. 296; *Lawson v. Carr*, *ubi supra*.

(*f*) *Morgan v. Sim*, 11 Moo. P. C. C. 307.

(*g*) See *ante*, pp. 49—52. It was not clear how far the provisions of the M. S. Act, 1854, were applicable to foreign ships. See the cases cited *ante*, p. 58; *The Iron Screw Colliery Company v. Schurmans*, 6 Jur., N. S. 883; and *The Wild Ranger*, 32 L. J., P. M. & A. 49. We have already seen (*ante*, p. 51) that the M. S. A. Amendment Act, 1862, refers in terms to foreign ships, and that it has been held that the provisions of this act referred to in the

text are applicable to foreign ships. *The Amalia*, 32 L. J., P. M. & A. 191.

(*h*) See *Tindall v. Bell*, 11 M. & W. 228. In this case the plaintiff, having been compelled to employ a steam tug in consequence of the collision, had defended a suit for salvage in the Admiralty Court by the owner of the tug, and had paid into that Court a sum which was insufficient. It was held that he was not entitled to recover from the defendant in the action the amount of the costs of this suit. The proper question for the jury in these cases is whether, in respect to the suit for salvage, the plaintiff in the action pursued the course which a prudent and reasonable man would have followed.

(*i*) *Yates v. Whyte*, 4 B. N. C. 272, which was decided on the principle laid down in *Mason v. Sainsbury*, 3 Doug. 61.

RIGHTS AND
REMEDIES IN
COURT OF
ADMIRALTY.

Proceedings in the Court of Admiralty against the ship in fault afford, in some respects, a better remedy, in cases of collision, than an action at law; for this Court has the power of proceeding *in rem*, and of arresting both English and foreign vessels; it may also, where both ships have been to blame, apportion the damages fairly between them; and it can, upon questions of fact, requiring for their decision skill and experience in navigation, obtain the valuable assistance of the Trinity Masters for its guidance (*k*).

Extent of
jurisdiction.

Where collision
within a
county.

The jurisdiction of the Court of Admiralty extends over the whole subject-matter of damage on the high seas. The owners of a vessel, injured by collision, may proceed in it either against the owners, or against the master personally, or against the ship herself (*l*). This Court had, until recently, no jurisdiction where the collision happened within the body of a county; the remedy, in such a case, being only in the Courts of common law (*m*). By the 3 & 4 Vict. c. 65, however, jurisdiction was given to the Court of Admiralty to decide all claims or demands, in the nature of salvage for services rendered to, or damage received by any ship or sea-going vessel, whether she was within the body of a county or upon the high seas at the time when the services were rendered or the damage received (*n*). And by the Admiralty Court Act, 1861 (24 Vict. c. 10), sect. 7, jurisdiction is given to the Court of Admiralty over any claim for damage done by any ship (*o*); and the Vice-Admiralty

(*k*) See the cases cited on the next page, and the judgment in *The General Steam Navigation Company v. Tonkin*, 4 Moo. P. C. C. 322.

(*l*) See the judgment of Dr. Lushington in *The Volant*, 1 W. Rob. 387. The cargo which is on board a vessel at the time of a collision is not liable, in the Admiralty Court, in respect of the damage done by her. *The Victor*, 1 Lush. A. R. 72.

(*m*) *Violet v. Blague*, Cro. Jac. 514; *S. C.*, Moo. 891; *Velthasen v. Ormsley*, 3 T. R. 315; *The Public Opinion*, 2 Hagg. 398; *The Elisa Jane*, 3 Hagg. 335. See also the cases collected in Pritchard's Adm. Digest, 282.

(*n*) 3 & 4 Vict. c. 65, s. 6. The jurisdiction of the Admiralty in cases of salvage performed within the body of a county, was afterwards regulated by the 9 & 10 Vict. c. 99 (which statute is

repealed), and depends now upon s. 476 of the M. S. Act, 1854. See also Edward's Adm. Jurisdiction, 162, and *Harris v. Willis*, 15 C. B. 710.

(*o*) The words "damage done" refer to damage done by a collision, and do not include a claim by a ship against her tug for negligence, whereby the vessel is got aground; *The Robert Pow*, 32 L. J., P. M. & A. 164; but where a ship, owing to the improper navigation of the steam tug which was towing her, was brought into collision with another ship and damaged, it was held that the owners could sue the tug in the Admiralty Court under this section. *The Nightwatch*, 1 Lush. A. R. 542. This section has been held to apply to a case of damage done by a sea-going vessel to a barge within the body of a county. *The Malwina*, 1 Lush. A. R. 493; also to a collision between English ships in

Courts Act, 1863 (26 Vict. c. 24), sect. 10, gives jurisdiction to the Colonial Vice-Admiralty Courts established under that act, over claims "for damage done by any ship."

The Court of Admiralty has jurisdiction to deal with cases of collision between foreign vessels, where they happen on the high seas near the English coast and within the limits of the ordinary jurisdiction of this Court (*p*). The power of the Judge of this Court to cause foreign vessels to be arrested in certain cases has been already mentioned (*q*). This provision enables the Court of Admiralty not merely to arrest the foreign ship, but also to adjudicate upon the whole question (*r*).

Where damage done by or to foreign vessels.

The ordinary mode of proceeding in the Admiralty Court for an injury sustained by collision is an action of damage in the Instance Court. This is a proceeding *in rem*, which may be commenced by the arrest of the ship under a warrant of the Court containing a citation of the master and of all others interested, and issued on an affidavit of the complainant stating in general terms the nature of his claim. The complainant then files his libel, and an answer having been put in by the owner, if he has appeared, (if he does not appear the Court proceeds by default,) the evidence is heard by the Judge, usually assisted by two of the Trinity Masters (*s*). The proceedings may also now be by monition citing the owner to appear and defend the suit, and upon satisfactory proof of personal service the Court may hear and determine the suit and make any order it may deem right (*t*). If any question arises requiring nautical knowledge for its determination, the Trinity Masters give their opinion as to which of the vessels was in the wrong; and if the Judge adopts their view sentence is given accordingly. Where, for the purpose of founding an action of collision in the Admiralty

Mode of procedure.

a canal in Holland. *The Deane*, 1 Lush. A. R. 539; and to a collision between foreign ships in foreign waters. *The Courier*, 1 Lush. A. R. 541. The word "ship" includes a barge propelled by oars alone. *The Malvina*, 11 W. R. 576. (*p*) See *The Johann Friederich*, 1 W. Rob. 35.

(*q*) *Ante*, p. 461; see also the 1 & 2 Geo. 4, c. 75, s. 32, which first gave a power of this description.

(*r*) *The Christiana*, 2 Hagg. 183, which is a decision upon the narrower words

of the 1 & 2 Geo. 4, c. 75.

(*s*) See Brown's Civil and Admiralty Law, vol. 2, p. 396 *et seq.*; Pritchard's Admiralty Dig. tit. Practice; the judgment in *The Vernon*, 1 Notes of Cases, 280; and the cases cited on the next page. The owners of the cargo may be cited and are liable to bring into Court the freight payable to the shipowner, *i. e.* the net freight. *The Leo*, 31 L. J., P. M. & A. 78.

(*t*) See the 17 & 18 Vict. c. 78, s. 13.

Court, a ship is arrested, and the plaintiff fails in identifying the vessel seized as the one which caused the damage, the proper course is to dismiss the action with costs, but not to award damages for the detention of the ship, unless there was *mala fides*, or such negligence in the arrest as to imply malice (*u*).

Until within the last few years the Court of Admiralty received evidence by written deposition only,—a practice which was obviously ill adapted to suits of damage for collision, where the *vivâ voce* examination and cross-examination of the witnesses is of the highest importance. By the 3 & 4 Vict. c. 65, however, this Court may, if it thinks fit, summon before it and examine witnesses by word of mouth, either in Court or by commissioners specially appointed, and may compel the attendance of witnesses and the production of documents by subpoena, in the same way as is done in the Courts of common law (*v*).

A verdict obtained by the same parties in a Court of law is not a bar to proceedings in the Court of Admiralty in respect of the same collision (*w*). The Court of Admiralty will not, however, as a general rule, allow a person to sue in that Court in respect of a collision where he has brought an action at common law, which is still pending, in respect of precisely the same claim; it is otherwise where, owing to the insolvency of the defendant in the action, no fruit can be obtained from it (*x*).

Where, in an action at law for a collision, it appeared on the pleadings that a judgment *in rem* had been previously obtained in the Admiralty Court by the plaintiffs at law for the same cause of action, under which the ship had been sold, but the

(*u*) *Xenos v. Aldersley*, 12 Moo. P. C. C. 352.

(*v*) 3 & 4 Vict. c. 65, ss. 7, 8 and 9. See also as to the Procedure of the Admiralty Court the 17 & 18 Vict. c. 78, and the 22 & 23 Vict. c. 6.

(*w*) *The Ann and Mary*, 2 W. Rob. 190; see also *The Bold Buccleugh*, 3 W. Rob. 220; *The Bengal*, 5 Jur., N. S. 1085, and *Castrique v. Imrie*, 8 C. B., N. S. 1; *S. C.*, in Cam. Scacc., *ib.* 405. See as to pleas that the defendant's ship was French, and that a French Court of law had decided the question, *The General Steam Navigation Company v. Guillou*, 11 M. & W. 877. In *Harris v. Willis*, 15 C. B. 710, it was held, in an action of collision, that a

plea alleging that the merits of the case had already been determined by the Admiralty Court in favour of the defendant in proceedings taken in that Court, afforded no answer to the action, the plea not showing on the face of it that the Admiralty Court had jurisdiction over the matter. Where in a cause of collision proceedings were taken in the Admiralty Court on behalf of the Crown against the ship causing the damage, it was held in that Court that the 18 & 19 Vict. c. 90, did not impose upon the Crown the liability to pay costs. *The Leda*, 32 L. J., P. M. & A. 58.

(*x*) *The John and Mary*, Swab. A. R. 471.

amount of the damage actually done exceeded the amount paid over to them under the Admiralty proceedings, it was held that these proceedings could not be set up in bar to the action (y).

The continental codes of Maritime Law differ in the principles by which they regulate compensation in cases of collision. The rules acted upon by the English Court of Admiralty on this head are as follows:—First, if the damage happen without blame being imputable to either party,—as where the loss is occasioned by a storm or any other *vis major*,—the loss must be borne by the party on whom it happens to light; the other is not responsible to him in any degree. Secondly, if both parties are to blame,—as where there has been a want of due diligence or of skill on both sides,—the loss must be apportioned between the parties, as it has been occasioned by the fault of both. Thirdly, if the damage happen by the misconduct of the suffering party only, the sufferer must bear his own burthen; and, lastly, if it was caused by the fault of the ship which ran the other down, the injured party is entitled to an entire compensation from the other (z). The first of these rules, namely, that where the damage is the result of mere accident the loss must be borne by the party on whom it falls, has been often recognized and acted upon (a). It appears that it will be applied not only where the evidence shows conclusively that the injury was occasioned by accident, but also where there is a reasonable doubt as to the preponderance of the evidence on this point (b). An inevitable accident has been defined to be one which could not possibly be

Rules by which damages are awarded.

(y) *Nelson v. Couch*, 15 C. B., N. S. 99.

(z) See the judgment of Sir W. Scott in *The Woodrop Sims*, 2 Dods. 85, cited and approved of by Lord Gifford in *Hay v. Le Neve*, 2 Shaw's Scotch Appeal Cases, 401.

(a) *The Shannon*, 1 W. Rob. 463; *The Ebenzer*, 2 W. Rob. 206; *The Itinerant*, *ib.* 236; *The Thornley*, 7 Jur. 659. This rule agrees with that of the Roman law (Dig. lib. 9, tit. 2, Ad Legem Aquileiam, fr. 29), the principle of which was adopted by some of the early maritime codes of Europe. See the Consolato, cap. 155. The laws of Oléron and of Wisbuy appear to lay down a different rule, and to direct that in cases of accident the damage shall be divided equally between the injured vessels. See Article 15 of the former law, and Articles

29, 49, 50 and 65 of the latter. It is curious that Boulay Paty, in his *Cours de Droit Commercial Maritime*, tit. 12, s. 6, vol. 4, p. 493, asserts that the former of these rules was adopted by all the ancient maritime codes. The French Code de Commerce follows the civil law, and by Art. 407 directs, "Si l'événement a été purement fortuit, le dommage est supporté sans répétition par celui des navires qui l'a éprouvé." See also the observations on this subject in Valin Ordon. de la Marine, liv. 3, tit. 7, art. 10, vol. 2, p. 177; Emerigon *Traité des Assur.* c. 12, s. 14; 1 Bell Comm. 580, 581, and notes; Marshall on Ins. B. 1, c. 12, s. 2; and 3 Kent Comm. 231.

(b) See the observations of Lord Stowell in *The Catharine of Dover*, 2 Hagg. 154.

prevented by the exercise of ordinary care, caution, or maritime skill (c). Under the second of these rules, when both vessels are in fault, the sums representing the damage sustained by each are added together, and the amount is equally divided between the two. This rule holds good even although one of the vessels may have been more in fault than the other (d). Where the Court of Session in Scotland, finding that both ships were to blame, but that a greater share of blame rested on one, decided that her owners were liable to two-thirds of the damage, the House of Lords, upon appeal, reversed the decision (e). This rule is now, however, subject to the provisions of the Merchant Shipping Act Amendment Act, 1862, which have been already noticed (f), and which provide that, if any collision appears to have been occasioned by the non-observance of any regulations made by or in pursuance of that act, the ship by which the regulation has been infringed is to be deemed to be in fault, unless the circumstances of the case made a departure from the rule necessary (g). The third rule mentioned above requires no comment (h). With respect to the last, when the facts upon which its application depends have been determined, the Court of Admiralty, in awarding compensation to the party injured, proceeds on the same principles as the Courts of common law.

**Consequential
damages.**

This Court may award full compensation for the damages, both direct and consequential, which have been sustained by a collision. Thus, the loss of the benefit of an agreement, the performance of which has been interfered with by the collision, may be taken into account (i). The Court refused, however, in one case, to give compensation for damage done on shore to the cargo of a vessel which had been run ashore after a col-

(c) See the judgment of Dr. Lushington in *The Virgil*, 2 W. Rob. 206.

(d) *The Judith Randolph*, cited by Lord Gifford in *Hay v. Le Neve*, 2 Shaw's Scotch Appeal Cases, 403; *Vaux v. Sheffer*, 8 Moo. P. C. C. 75; *The Linda*, 4 Jur., N. S. 147. Lord Denman, in *De Vaux v. Salvador*, 4 A. & E. 432, speaking of this rule said, "It grows out of an arbitrary provision in the law of nations from views of general expediency, not as dictated by natural justice, nor (possibly) quite consistent with it." See also the quotations from foreign law writers, and the valuable re-

marks in Mr. Serjt. Shee's edition of *Abbott on Ship*. 523 (10th edit.).

(e) *Hay v. Le Neve*, 2 Shaw's Appeal Cases, 395; see also *The Washington*, 5 Jur. 1067.

(f) *Ante*, p. 463.

(g) *Lawson v. Carr*, 10 Moo. P. C. C. 162; and see the cases cited *ante*, p. 464.

(h) *The Ligo*, 2 Hagg. 356, was a case falling within this rule.

(i) See the judgment of Dr. Lushington in *The Matchless*, 10 Jur. 1017; *The Betsy Caines*, 2 Hagg. 28; see also *The Yorkshireman*, *ib.* 30, note.

lision, some negligence appearing on the part of the owners of the cargo (*k*). And, in a modern case, the Court refused to allow, in addition to the full value of the vessel, a claim in the nature of demurrage in respect of the loss of the employment of the ship, and of the owner's earnings, which was occasioned by the collision (*l*). The rule which is applied in cases of insurance, namely, that in fixing the amount to be paid by the underwriters for repairs, one-third of the cost price is to be deducted where new materials are substituted for old (*m*), does not apply in causes of damage by collision; for in these cases the claim for indemnity arises *ex delicto*, and the right against the wrongdoer is for a complete restitution (*n*); although the effect may be to make the ship of greater value than she was before the collision (*o*).

The successful suitor, in a cause of damage, has a lien upon the property condemned to the full extent of the owner's interest in the vessel: his lien is paramount to the claims of mortgagees prior to the period when the damage was done, and extends, in case of deficiency of proceeds, to subsequent accretions in the value of the ship arising from repairs effected at the expense of the owner, or even of a stranger, unless he did them on the security of the ship in ignorance of the collision (*p*). This doctrine has been carried so far that the lien has been held to travel with the ship into whosoever possession she may come, and to relate back, as soon as a claim for damage is established, to the period when the claim first arose. Thus, where after a collision, and before the arrest of the ship, she was sold to a *bonâ fide* purchaser without notice, it was held that a maritime lien had attached, at the time of the collision, and overrode the intermediate rights of the vendee (*q*).

Lien on property condemned.

(*k*) *The Eolides*, 3 Hagg. 367.

(*l*) *The Columbus*, 3 W. Rob. 158. See also *The Clarence*, 3 W. Rob. 283.

(*m*) See *ante*, p. 419.

(*n*) See the judgment in *The Gazette*, 2 W. Rob. 281.

(*o*) *The Pactolus*, Swab. A. R. 173; *The Clyde*, Swab. A. R. 23.

(*p*) *The Aline*, 1 W. Rob. 111; and see *The Benares*, 14 Jur. 681; Pritchard's Admiralty Digest, tit. LIENS.

(*q*) *The Bold Buccleugh*, 3 W. Rob. 220, affirmed in the Privy Council, 7 Moo. P. C. C. 281; *Harmer v. Bell*, 7 Moo. P. C. C. 257. A further point

was raised as to whether the pendency of proceedings in the Court of Session in Scotland to recover damages in respect of the same collision could be set up as a *lis alibi pendens* in answer to the claim in the English Court of Admiralty. It was held by the Privy Council, that since the two suits were in their nature different, the one being *in personam*, and the other *in rem*, the pendency of the former could not be pleaded in suspension of the latter. See as to what foreign judgments affecting the ship and cargo are to be deemed *in rem*, and not *in personam*, *Cammell v.*

The time for appealing from the Admiralty Court to the Privy Council is not fixed by any statute; and the Court of Appeal has a discretionary power of dealing with this matter according to the circumstances of each particular case (*r*).

**INJURIES
CAUSED BY
OBSTRUCTIONS
IN RIVERS AND
HARBOURS.**

Where a ship was sunk in the Thames by accident, without any fault of the owner, it was held that an indictment against him for not removing the obstruction could not be maintained (*s*). In another case an action was brought for an injury to the plaintiff's vessel by reason of its coming into collision with a barge, belonging to the defendant, which had been sunk in a navigable river. The declaration alleged that the barge was concealed by the water, and obstructed the navigation. It did not show that the barge had been sunk by any negligence of the defendant, or that, at the time of the accident, it was within his possession or control, but it alleged that it was the duty of the defendant to use proper precautions by leaving a buoy or other signal over the sunken barge, to prevent other vessels from running against it. The Court held that no such duty could be implied from the facts stated, and that the declaration was bad in substance (*t*).

In a later case the declaration alleged that the defendants were possessed of a mooring anchor, which was kept by them fixed in a known part of a navigable river, covered by ordinary tides, and that before the accident of which the plaintiff complained, it had been removed to another part of the river, where it was not indicated, and was covered by ordinary tides, of which the defendants had notice. It then alleged that a reasonable time had elapsed from the time of this notice to the defendants, and that they had, during this time, the means and power of properly fixing the anchor, and of indicating its situation, but that they neglected to do so, whereby the plaintiff's vessel,

Sewell, 3 H. & N. 617; *S. C.*; in Cam. Scacc., 5 H. & N. 728, and *Castrique v. Imrie*, 8 C. B., N. S. 1; *S. C.*, in Cam. Scacc., *ib.* 405.

(*r*) *The Florence Nightingale*, 1 Lush. A. R. 530. In ordinary cases the right of appeal must be exercised within fifteen days from the date of the decree complained of, *ib.*

(*s*) *Rez v. Watts*, 2 Esp. 675.

(*t*) *Brown v. Mallett*, 5 C. B. 599, see also *Metcalf v. Hetherington*, 11 Ex. 257. In the former of these cases the

Court intimated, that where the owner retains possession of his sunken vessel, a duty of this kind might be made to appear by proper averments; and said that in the case of *Harmond v. Pearson*, 1 Camp. 515, where Lord Ellenborough appears to have ruled that the owner of a sunken vessel was bound to place a buoy over the wreck, the declaration may have contained such averments, and that it is probable that the owner retained possession of his vessel at the time of the accident.

whilst sailing in a part of the river ordinarily used by ships, ran foul of the anchor and was damaged. It was held that the declaration was bad on demurrer, for, although it alleged that the anchor was the property of the defendants, it did not show that they were privy to its removal, or that there was any duty on them to refix it or to indicate its position (*u*).

Where, however, a declaration alleged that a vessel had been sunk in a navigable part of the Bristol Channel, and that whilst so sunk the defendant purchased her, and *had the possession, control, and management* of her, and allowed her to remain under water without buoy or notice, so that the plaintiff's vessel struck on her and was injured, it was held that the declaration showed a good cause of action; since it sufficiently appeared that the defendant had it in his power, by due care and exertion, to have removed the sunken vessel or shifted her position, and thus might have prevented the injury (*v*).

Where a person erects on the shore of a navigable river, between high and low water-mark, a work for the more convenient use of his adjoining wharf, which work (either from its original construction, or from want of repair) presents a dangerous hidden obstruction to the navigation, he is responsible for an injury thereby occasioned to a barge coming to the wharf, there being no negligence on the part of the persons in charge of it (*w*).

A liability, wider than the ordinary common law liability, exists in the case of the owners of a navigation, or others upon whom a special duty is cast by law. Thus, the proprietors of a canal, which is open to the public on payment of tolls, are liable for the damage caused by a collision with a sunken vessel in the canal, if they could have removed the obstruction, or have warned vessels against it by a light or signal; for the common law imposes a duty on the proprietors, not perhaps to repair the canal, or absolutely to free it from obstruction, but to take reasonable care, so long as they keep it open for public use, that those who use it may be able to do so without danger to their lives or property (*x*).

(*u*) *Hancock v. The York, Newcastle, and Berwick Railway Company*, 10 C. B. 348.

(*v*) *White v. Crisp*, 10 Ex. 312.

(*w*) *White v. Phillips*, 15 C. B., N. S.

245.

(*x*) *Parnaby v. The Lancashire Canal Company*, 11 A. & E. 223. See also *The Parrett Navigation Company v. Robins*, 10 M. & W. 593.

The same rule has been laid down with reference to public docks and basins, the proprietors of which receive tolls from ships using them (y).

By the 10 & 11 Vict. c. 27 (the Harbours' Clauses Act), a power is given to harbour masters to remove wrecks or other obstructions to harbours, docks, or piers, or to their approaches, and floating timber impeding their navigation, and the expense of so doing is to be repaid by the owners. The harbour masters may detain the wreck, or floating timber, and sell the same to reimburse themselves, (if the expenses are not paid to them on demand,) rendering the overplus to the owners on demand (z).

A private individual cannot, of his own authority, abate a public nuisance in a navigable river, or other public highway, unless it does him a special injury; he can only interfere with it as far as is necessary to exercise his right of passing along the highway (a).

**INSPECTION
OF LIGHT-
HOUSES AND
PAYMENT OF
LIGHT DUES
UNDER THE M.
S. A. AMEND-
MENT ACT,
1862.**

The Merchant Shipping Act Amendment Act, 1862, contains, in sects. 43—47, provisions as to the inspection of local lighthouses, buoys and beacons, and as to the levying from ships and the application of dues for local lighthouses, which it is not necessary to mention here in detail.

By sect. 44 of this act, the persons liable to pay light dues for any ship are declared to be the owner or master, and the consignees or agents of the ship who have paid or made themselves liable to pay any other charge on account of the ship at the port of arrival or discharge (b). And by sect. 45, all con-

(y) *Gibbs v. The Trustees of the Liverpool Dock Company*, 3 H. & N. 164; *The Mersey Docks and Harbour Board v. Penhallow*, 7 H. & N. 329; *Thompson v. The North Eastern Railway Company*, 2 B. & S. 106; *S. C.*, in Cam. Scacc., *ib.* 119. In *Metcalf v. Hetherington*, 5 H. & N. 719, a somewhat narrower view was taken of the liability of harbour trustees. In this case a harbour-master, without the knowledge of the trustees, directed that a ship should be placed in a particular berth where an obstruction existed which injured the ship. The trustees had had notice of the obstruction, as well as the harbour master, and had directed that it should be removed. A portion of it only had been removed, but at the time when the ship was placed in the berth in question, neither the

harbour master or the trustees knew that it continued unsafe. Under these circumstances it was held, in the Exchequer Chamber, that there was no evidence of negligence on the part of the trustees.

(z) 10 & 11 Vict. c. 27, s. 56. See as to the removal of unserviceable vessels from harbours, *ib.* s. 57.

(a) *Bridge v. The Grand Junction Railway Company*, 3 M. & W. 244; *Davies v. Mann*, 10 M. & W. 546; *The Mayor of Colchester v. Brooke*, 7 Q. B. 339; *Dimes v. Petley*, 15 Q. B. 276.

(b) By the same section it is provided, that the light dues shall be recoverable in the same manner as penalties of the same amount are recoverable under the M. S. Act, 1854.

signees or agents (not being the owners or masters) who are made liable by the act for the payment of light dues may retain the amount paid by them, in these cases, from any moneys in their hands belonging to the owners of the ship.

By sect. 415 of the Merchant Shipping Act, 1854, when a fire or light is burnt or exhibited so as to be liable to be mistaken for a light proceeding from a lighthouse, the general lighthouse authority for the district may require it to be extinguished or effectually screened.

By the Merchant Shipping Act Amendment Act, 1862, RULES AS TO LIGHTS AND SIGNALS IN HARBOURS AND RIVERS. sect. 31, it is provided that all rules concerning lights or signals to be carried by vessels navigating any harbour, river, or other inland navigation, or concerning the steps for avoiding collision to be taken by these vessels, which have been or are hereafter made under the authority of any local act, are to continue in full force notwithstanding the provisions of that act.

And by sect. 32, in the case of any harbour, river, or other inland navigation for which such rules are not and cannot be made under the authority of any local act, the Queen in council may, upon application from the harbour trust or body corporate owning or exercising jurisdiction there, or from the persons interested in the navigation, make rules concerning the lights or signals to be carried, and the steps for avoiding collision to be taken, by vessels navigating these waters; and these rules, when made, are, so far as regards vessels navigating these waters, to have the same effect as if they were regulations contained in the schedule to that act.

It is provided by sect. 47 of the 24 & 25 Vict. c. 97, (the OFFENCE OF EXHIBITING FALSE SIGNALS, &C., AND REMOVING BUOYS, &C. general act relating to malicious injuries to property,) that if any person unlawfully masks, alters, or removes a light or signal, or unlawfully exhibits any false light or signal, with intent to bring any ship, vessel, or boat into danger, or unlawfully and maliciously does anything tending to the immediate loss or destruction of any ship, vessel, or boat, he shall be guilty of felony. By sect. 48 of this act, it is also made felony, unlawfully and maliciously to cut away, cast adrift, remove, alter, deface, sink or destroy, or in any other manner unlawfully and maliciously to injure, or conceal, any boat, buoy, buoy rope,

perch or mark used or intended for the guidance of seamen, or the purpose of navigation (c).

**INJURY TO
TELEGRAPHIC
CABLE.**

In an action brought by the owners of a telegraphic cable, which was lying at the bottom of the sea between England and France, it appeared upon the pleadings that the defendants, who were aliens, had, whilst sailing on the high seas and more than three miles from the English coast, lowered an anchor and injured the cable. Under these circumstances, the Court said that it would presume that the masters of ships were aware of the existence and situation of submarine cables, and that a duty was thereby cast upon them to manage their vessels without negligence, and so as to avoid (if possible) any injury to the cables (d).

(c) The doing of any acts with intent to commit any of the offences mentioned in this section, is also made a felony, *ib.*

(d) *The Submarine Telegraphic Company v. Dickson*, 12 W. R. 384.

CHAPTER X.

SALVAGE AND WRECK.

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SALVAGE is the compensation allowed to persons by whose assistance a ship, or boat, or the cargo of a ship, or the lives of the persons belonging to her, are saved from danger or loss, in

SALVAGE.
General nature
of service.

cases of shipwreck, derelict, capture, or the like(*a*). The right to remuneration in these cases rests obviously upon equitable grounds; it was recognized by the Roman law, and has been upheld by the different maritime Courts of Europe(*b*). The subject of salvage has been frequently dealt with by the Legislature of this country. The chief statutory provisions now in force with reference to wreck and salvage are contained in Part VIII. of the Merchant Shipping Act, 1854(*c*).

Independently of these statutory provisions, a salvor may be defined to be one who assists a vessel in distress, acting at the time as a volunteer, and not under any contract or duty which binds him to that particular service(*d*).

Must be extraordinary.

Salvage is not claimable in every case in which work and labour is done about the preservation of a ship and cargo; there must, usually, in order to support a claim for salvage, be skill, enterprise, and risk on the part of the salvors, and peril with respect to the property saved(*e*). Thus, if the services rendered do not exceed the ordinary assistance which is rendered by a towing ship, no salvage can be claimed(*f*). If, however, a steamer renders assistance to a disabled vessel by towing, she may be entitled to salvage(*g*); and a service which commences as a mere towage service may, if new circumstances arise, become a salvage service(*h*). The conversion of towage into salvage service depends on the circumstances of each particular case; and the Courts watch with jealousy the conduct of tug steamers, in cases of this description, in order to see that the

(*a*) See 1 Beawes' Lex Merc. 241.

(*b*) See the judgment of Sir C. Robinson in *The Calypso*, 2 Hagg. 218.

(*c*) The General Salvage Acts in force before this were the 9 & 10 Vict. c. 99, and the 16 & 17 Vict. c. 131 (ss. 39 to 51). The former of these statutes repealed the earlier Salvage Acts (which are very numerous), with the exception of the 1 & 2 Geo. 4, c. 76, and the 9 Geo. 4, c. 37, which relate to salvage within the jurisdiction of the Cinque Ports. See *post*, p. 500.

(*d*) See the judgment of Lord Stowell in *The Neptune*, 1 Hagg. 236.

(*e*) See the judgment in *The Clifton*, 3 Hagg. 120; *The London Merchant*, *ib.* 395; *The Charlotte*, 3 W. Rob. 71; *Colby*

v. Watson, 6 Moo. P. C. C. 334; and *The Prince of Wales*, 6 Notes of Cases, 39. See also the cases cited in *Castellain v. Thompson*, 13 C. B., N. S. 105.

(*f*) *The Princess Alice*, 3 W. Rob. 138; *The Harbinger*, 16 Jur. 729; *The Upnor*, 2 Hagg. 3; *The Annapolis*, 1 Lush. A. R. 355; *The Lady Egidia*, *ib.* 513.

(*g*) *The Charles Adolphe*, Swab. A. R. 153.

(*h*) See the judgment of Sir J. Nicholl in *The Isabella*, 3 Hagg. 428; *The Princess Alice*, *ubi supra*; *The London Merchant*, 3 Hagg. 394; *The Reward*, 1 W. Rob. 174; *The Galatea*, 4 Jur., N. S. 1064; *The Albion*, 1 Lush. A. R. 282; *The Saratoga*, *ib.* 318.

increased danger from which the ship may have been rescued, was not attributable to the fault of the tug. If it was caused by wilful misconduct or negligence, or want of reasonable skill on the part of the tug, she is never permitted to profit by her own wrong and can have no claim to salvage (i). Salvage may be awarded in a case of transhipment if the cargo was really in danger; but claims for salvage remuneration made under such circumstances are watched with jealousy by the Court of Admiralty (j). A person who merely hires men to assist in landing the cargo of a vessel that is stranded cannot claim as a salvor, although

(i) *The Minnehaha* (*Ward v. M' Corkill*) 1 Lush. A. R. 335; S. C., 15 Moo. P. C. C. 133. The following broad and luminous statement of the rules by which the Courts are governed in cases of this kind will be found in the judgment of the Privy Council in this case. "When," said the Court, "a steam boat engages to tow a vessel for a certain remuneration from one point to another, she does not warrant that she will be able to do so, and will do so, under all circumstances, and at all hazards; but she does engage that she will use her best endeavours for that purpose, and will bring to the task competent skill, and such a crew, tackle, and equipments, as are reasonably to be expected in a vessel of her class. She may be prevented from fulfilling her contract by a *vis major*, by accidents which were not contemplated and which may render the fulfilment of her contract impossible, and in such case, by the general rule of law, she is relieved from her obligations. But she does not become relieved from her obligations because unforeseen difficulties occur in the completion of her task; because the performance of her task is interrupted, or cannot be completed in the mode which was originally intended, as by the breaking of the ship's hawser. But if in the discharge of this task by sudden violence of wind or waves, or other accidents, the ship in tow is placed in danger, and the towing vessel incurs risks and performs duties which were not within the scope of her original engagement, she is entitled to additional remuneration for additional services if the ship be saved, and may claim as a salvor, instead of being restricted to the sum stipulated to be paid for mere towage. Whether this larger remuneration is to be considered as an addition to, or

in substitution for, the price of towage, is of little consequence practically. The measure of the sum to be allowed as salvage would, of course, be increased or diminished according as the price of the towage was or was not included in it. In the cases on this subject, the towage contract is generally spoken of as superseded by the right to salvage. It is not disputed, that these are the rules which are acted upon in the Court of Admiralty, and they appear to their Lordships to be founded in reason and in public policy, and to be not inconsistent with legal principles . . . To hold on the one hand, that a tug, having contracted to tow is bound, whatever happens after the contract, though not in the contemplation of the parties, and at all hazards to herself, to take the ship to her destination; or on the other, that the moment the performance of the contract is interrupted, or its completion in the mode originally intended becomes impossible, the tug is relieved from all further duty, and at liberty to abandon the ship in her charge to her fate;—would be alike inconsistent with the public interests. The rule, as it is established, guards against both inconveniences, and provides at the same time for the safety of the ship and the just remuneration of the tug. The rule has been long settled; parties enter into towage contracts on the faith of it; and we should be extremely sorry that any doubt should be supposed to exist upon it. It is said, that it has never been brought before us for decision. If so, considering how often the rule has been acted upon, the almost necessary inference is, that it has never been made the subject of appeal, because it has been universally acquiesced in."

(j) *The Hope*, 8 Hagg. 423; *The Westminster*, 1 W. Rob. 229.

he is entitled to a fair remuneration for his trouble (*k*). Where a cutter approached as nearly as could be done with safety to a ship in distress which had signalled for help, and gave advice to her which led to her safety, it was considered in the Court of Admiralty that this constituted salvage service (*l*).

Where the crew of a vessel are so reduced by death and sickness as to be insufficient for her navigation, another vessel which, on the high seas, supplies men from her own crew, is entitled to salvage (*m*). Where a vessel lying in dock was in danger of catching fire from the surrounding warehouses which were in flames, and was towed out into a place of safety by a steamer, it was held that salvage was payable (*n*).

Services which are performed on land in connection with assistance rendered at sea may be included in a claim for salvage (*o*). Where a suit for salvage was brought by a person who had taken charge of a stranded vessel under an agreement with the master, and had saved a valuable cargo, the Court allotted to him a reasonable remuneration; although it said that the services rendered were rather in the character of a meritorious agency than of a salvage service (*p*). But charges for repairs done to the ship cannot be included in a salvage claim (*q*).

Must be beneficial.

If the services of the alleged salvors are not attended with, or followed by, benefit to the owners of the ship, or goods, no salvage can be claimed; for salvage reward is a compensation for benefit actually conferred in the preservation of property, not for meritorious exertions alone (*r*). Where a boat's crew, after labouring for a whole day at a vessel which was ashore, abandoned her, without any intention of returning, leaving their service incomplete, and she was afterwards got off by others, it was held that those who first gave assistance were not entitled to salvage, although some of them tendered their services to the real

(*k*) *The Watt*, 2 W. Rob. 70. See also *The Lively*, 3 W. Rob. 64, in which a claim for salvage under similar circumstances by an agent of Lloyd's was dismissed.

(*l*) *The Eliza*, 1 Lush. A. R. 536. The mere giving of information is not, under ordinary circumstances, a salvage service: *The Little Joe*, 1 Lush. A. R. 88.

(*m*) *The Roe*, Swab. A. R. 84.

(*n*) *The Tees*, 1 Lush. A. R. 505.

(*o*) See the judgment in *The Mary Ann*, 1 Hagg. 161.

(*p*) *The Favorite*, 2 W. Rob. 255.

(*q*) *The Rainger*, 2 Hagg. 42.

(*r*) See *The India*, 1 W. Rob. 406; the judgment in *The Zephyrus*, *ib.* 330; and *The Edward Hawkins*, 1 Lush. A. R. 515.

salvors before the vessel was got off(*s*). Where, however, a salvage is finally effected, those who meritoriously contribute to that result are entitled to share in the reward, although the part they took, standing by itself, would not in fact have produced it(*t*).

When a ship or cargo belonging to a British owner is captured by an enemy, and retaken either by a Queen's ship or by a private vessel, the owner is entitled by statute, upon proof of his title, to a restoration of the property subject to payment of salvage(*u*). It is the practice of the Court of Admiralty to extend the benefit of this rule to allies whose property has been recaptured by an English vessel, unless it appears that they belong to a state which deals with British property upon a less liberal principle; in which case the rule of reciprocity is applied(*x*).

Cases of recapture.

The preservation of human life has always been considered to be an important ingredient in estimating the amount to be paid to salvors where property has also been saved(*y*); but where no property was saved, but human life alone was preserved, the Court of Admiralty had, apart from statute, no power of remunerating the salvors, however meritorious their conduct might have been(*z*). The 1 & 2 Geo. 4, c. 75, empowered justices of the peace to decide on salvage claims for services rendered to ships or goods, "or for being instrumental in saving the life or lives of any person or persons on board," and gave an appeal to the Court of Admiralty to parties dissatisfied(*a*). It was held that this statute conferred no original jurisdiction on the Court of Admiralty to award salvage in cases where life alone had been

Preservation of human life.

(*s*) *The India*, 1 W. Rob. 406.

(*t*) *The Jonge Bastiaan*, 5 C. Rob. 322; *The Atlas*, 1 Lush. A. R. 518. Salvors working under an engagement, that is to say, not mere volunteers, but men engaged by a ship in distress to assist her, may be entitled to salvage reward, although their efforts are unsuccessful; if the ship is otherwise saved: *The Undaunted*, 1 Lush. A. R. 90.

(*u*) See the 13 Geo. 2, c. 4, s. 18; the 17 Geo. 2, c. 34, s. 20; the 29 Geo. 2, c. 34, s. 24; the 45 Geo. 3, c. 72, s. 7; and the 55 Geo. 3, c. 60, s. 5. The last of these acts expired with the French

war. Before these statutes, if a ship of this country was captured, taken *infra præsidia*, and there condemned, the property in her was entirely divested out of the owner, and he acquired no new right to her upon recapture. See the judgment of Sir W. Scott in *L'Actif*, Edw. 186.

(*x*) *The Santa Cruz*, 1 Rob. 50.

(*y*) *The Aid*, 1 Hagg. 83; *The Ardincaple*, 3 Hagg. 151.

(*z*) *Ibid.*; see also the judgment in *The Zephyrus*, 1 W. Rob. 331, and *The Johannes*, 1 Lush. A. R. 182.

(*a*) 1 & 2 Geo. 4, c. 75, ss. 8 & 9.

preserved (*b*). This act was repealed by the 9 & 10 Vict. c. 99, which provided that every person (except receivers of Admiralty droits under the act) who should act or be employed in the saving or preserving of any ship in distress, or of any part of the cargo, or "of the life of any person on board the same," should be paid a reasonable salvage (*c*). The terms of this statute were wider than those of the earlier act, but it contained no distinct provision as to the persons who were to pay salvage in case life alone was preserved, or as to the principle upon which the amount was to be estimated. The Court of Admiralty, therefore, notwithstanding this statute, continued to act in accordance with the decision upon the earlier act.

Provisions of the Merchant Shipping Act, 1854, of the Admiralty Court Act, 1861, and of the Merchant Shipping Act Amendment Act, 1862.

By recent acts of Parliament, however, this defective state of the law has been remedied, and the cases in which, and the persons by whom, salvage is to be paid have been clearly defined, as well as the principles upon which it should be estimated.

The provisions of the Merchant Shipping Act, 1854, with reference to salvage, are contained in Part VIII.

It is provided, by sect. 458 of this act, that whenever a ship or boat is stranded, or otherwise in distress, on the shore of any sea, or tidal water, situated within the limits of the United Kingdom, and services are rendered by any person,

- (1.) In assisting the ship or boat;
- (2.) In saving the lives of the persons belonging to the ship or boat (*d*);
- (3.) In saving the cargo or apparel, or any portion of it;

And whenever any wreck (*e*) is saved by any person other than a receiver within the United Kingdom;

There shall be payable by the owners of the ship, boat, cargo,

(*b*) *The Zephyrus*, 1 W. Rob. 329.

(*c*) 9 & 10 Vict. c. 99, s. 19. See also s. 21. This statute was repealed by the 17 & 18 Vict. c. 120.

(*d*) See the observations on this provision by Dr. Lushington in *The Bartley*, Swab. A. R. 199, and in *The Coromandel*, *ib.* 207. Priority is given to claims in respect of life salvage. See the M. S. Act, 1854, s. 459, and the case last cited.

(*e*) By the interpretation clause of the act (s. 2), the term "wreck" includes "jetsam, flotsam, lagan, and derelict, found in or on the shores of

the sea or any tidal water." See further as to the meaning of "wreck," Com. Dig. tit. Wreck. Timber found floating at sea, without an apparent owner, having drifted from its moorings, is not "wreck" within the meaning of the act. *Palmer v. Rouse*, 3 H. & N. 505. Where goods were imported into this country, warehoused, entered for exportation, and shipped for Belgium, but the vessel was lost within the English port, and the goods, being partly thrown upon the shore, and partly found floating on the sea and landed, were conveyed to the warehouse of the

apparel, or wreck, to the person by whom the services are rendered, or by whom the wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred in the performance of the services, or the saving of the wreck.

By sect. 459, salvage, in respect of the preservation of the life of any person belonging to any ship or boat, shall be payable by the owners in priority to all other claims for salvage; and in cases where the ship or boat is destroyed, or where the value of it is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life, the Board of Trade may in its discretion award to the life salvor, out of the Mercantile Marine Fund, any sum it may deem fit, in satisfaction of the amount of salvage so left unpaid.

The above provisions relating to salvage of life did not apply to such salvage services when rendered by or to the crew of a foreign ship, or of a British ship in foreign waters (*f*), but by the Admiralty Court Act, 1861 (24 Vict. c. 10), sect. 9, it is provided, that all the provisions of the Merchant Shipping Act, 1854, in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any British ship or boat, wheresoever the services may have been rendered, and from any foreign ship or boat, where the services have been rendered either wholly or in part in British waters.

Life salvage
to or by foreign
ships.

And by the Merchant Shipping Act Amendment Act, 1862, sect. 59, Whenever it is made to appear to the Queen that the government of any foreign country is willing that salvage shall be awarded by British Courts for services rendered in saving life from any ship belonging to such country when such ship is beyond the limits of British jurisdiction, the Queen may, by order in council, direct that the provisions of the Merchant Shipping Act, 1854, and of the Merchant Shipping Act Amendment Act, 1862, with respect to salvage for services rendered in saving life from British ships, shall in all British Courts be held to apply to services rendered in saving life from the ships of such

lord of the manor, and immediately claimed by the owner, it was held that they were chargeable with duty as "wreck" brought or coming into the

United Kingdom, within the 3 & 4 Will. 4, c. 52, s. 50. *Barry v. Arnaud*, 10 A. & E. 646.

(*f*) *The Johannes*, 1 Lush. A. R. 182.

foreign country, whether such services are rendered within British jurisdiction or not (*g*).

Under the system established by these acts, the Court of Admiralty considers the preservation of human life as the most important of all elements in weighing the value of a salvage service (*h*).

**WHO MAY
CLAIM AS
SALVORS.**

When officers
or crew of ship
in distress
may claim.

The officers and crew of the ship in distress cannot, except under extraordinary circumstances, claim salvage for services rendered to their own ship, for they are bound by their engagement to perform these services (*i*). For the same reason salvage cannot be claimed by seamen who are successful in rescuing their ship from others of the crew who have mutinied (*j*). This rule does not, however, apply to a recapture from an enemy; for the crew are under no obligation of duty to attempt a recapture, and must therefore be considered to have acted as volunteers in the matter (*k*). So when a ship that has received damage is *bonâ fide*, and for the purpose of saving life, abandoned at sea by order of the master without hope of recovery, the mariners' contract is at an end; and if the crew volunteer to return to the ship, and are instrumental in saving her, they are entitled to salvage (*l*). If, however, the abandonment take place upon the coast, and the crew escape to shore, any services they render in saving the wreck will only entitle them to wages according to their contract (*m*). So if the abandonment be only temporary, or be not *bonâ fide* and by order of the master, the crew are still bound to labour under their original contract, and cannot claim salvage (*n*).

(*g*) As to the effect of such an order in council, its publication, alteration and revocation, and the mode of proving it, see the M. S. A. Amendment Act, 1862, ss. 61—64.

(*h*) *The Thomas Fielden*, 32 L. J., P. M. & A. 61; and *The Eastern Monarch*, 1 Lush. A. R. 81.

(*i*) See the judgment in *The Neptune*, 1 Hagg. 236. See as to the rule in America, *Hobart v. Drogan*, 10 Peters (American) Rep. 108, in which it was held that seamen, in the ordinary course of things, cannot become salvors, whatever may be the extent of the peril or the gallantry of their services; but that they may claim as salvors if extraordinary events occur, which dissolve their connexion with the ship *de facto*, or by

operation of law, or if they exceed their proper duty. See also 3 Kent Comm. 246, 248.

(*j*) *The Governor Raffles*, 2 Dods. 14.

(*k*) See the judgment in *The Two Friends*, 1 Rob. 278; *The Beaver*, 3 ib. 292.

(*l*) *The Florence*, 16 Jur. 572; *The Warrior*, 1 Lush. A. R. 476. This principle is also acted upon in America. See *Mason v. The Ship Blaireau*, 2 Cranch (American) Rep. 239; and *Hobart v. Drogan*, *ubi supra*.

(*m*) See the judgment of Dr. Lushington in *The Florence*, *ubi supra*.

(*n*) See the judgments of Dr. Lushington in *The Florence* and *The Warrior*, *ubi supra*.

Pilots are not entitled, under ordinary circumstances, to charge more for their services than the statutory rates of pilotage (o). They are not, however, bound to assist vessels in distress for mere pilotage reward, but are entitled in extraordinary cases of this description to remuneration in the nature of salvage (p). For although the Courts will not favour a claim for salvage by a party originally engaged as a pilot, it is clear that pilots are not to be compensated by mere pilotage remuneration for salvage services (q).

Passengers are not bound, for the purpose of saving the vessel or cargo, to do any act inconsistent with their own safety; consequently where a ship, being in danger, was deserted by the master and a portion of the crew, and a passenger took the command and brought her safely to port, it was held that he was entitled to salvage (r). Where, however, passengers voluntarily remain on board, and services such as pumping are rendered by them, during a danger to the ship which is common to all on board, they cannot claim salvage (s).

Persons who enter into an express contract to render assistance to a ship in distress for a fixed sum cannot claim salvage (t). Unless there is fraud, the Court of Admiralty will confine the salvors to the amount stipulated for by the bargain, although it be inadequate to the services rendered (u). So, as against the owners of the vessel saved, the Court will uphold a salvage agreement which has been entered into by them, unless it is

(o) *Ante*, p. 211.

(p) See the cases cited *ante*, p. 211; also *The City of Edinburgh*, 2 Hagg. 333; *The Industry*, 3 ib. 203; and *The Hebe*, 2 W. Rob. 246. The 9 & 10 Vict. c. 99, s. 21, which enabled justices to decide on the amount of salvage where the owners and salvors disagreed, expressly excepted cases of "ordinary pilotage." It has been held in America, that pilots are entitled to salvage when they perform salvage services beyond the limits of their proper duties, or under circumstances to which those duties do not apply. *Hobart v. Drogan*, 10 Peters (American) Rep. 108.

(q) *Halsey v. Albertuszen*, 11 Moo. P. C. C. 313.

(r) *Newman v. Walters*, 3 B. & P. 613. See also the remarks of Lord Stowell in *The Two Friends*, 1 Rob. 285;

The Salacia, 2 Hagg. 269; and *The Hope*, 3 Hagg. 423. In *The Branston*, 2 Hagg. 3, note, Lord Stowell refused to allow salvage to a passenger who was a naval officer.

(s) *The Vrede*, 1 Lush. A. R. 322. See also the judgment of Lord Stowell in *The Branston*, *ubi supra*.

(t) *The Mulgrave*, 2 Hagg. 77; *The Betsey*, 2 W. Rob. 167; *The True Blue*, ib. 176; *The Repulse*, ib. 396; *The Emulous*, 1 Sumner (American) Rep. 207. The proof of such an agreement must, however, be clear and satisfactory. *The Graces*, 2 W. Rob. 294. The Court of Admiralty has jurisdiction over an agreement for salvage service, although it be made on shore. *The Catherine*, 12 Jur. 682.

(u) *The Henry*, 15 Jur. 183.

Persons who act under a contract.

shown to be grossly exorbitant, or to have been obtained by compulsion or fraud (*x*); or unless it has been corruptly made with the owner's agent (*y*). It is otherwise, however, where an agreement fixing the amount of remuneration has been made and mutually abandoned (*z*), or circumstances have arisen which have rendered necessary exertions such as could not have been contemplated at the time of the making of the contract (*a*). The master of the vessel rendering assistance has power in these cases to bind his own interest and that of his employers (*b*), but an agreement entered into by him will not include the rest of the crew, unless they concur in it (*c*); nor will the Court of Admiralty uphold an agreement by which the seamen bind themselves to receive only a particular apportionment of the reward in the case of their earning salvage, for such a bargain is contrary to principle, as it tends to deprive the salvors of their usual motives to enterprize (*d*). By the Merchant Shipping Act, 1854, it is provided, that every stipulation in any agreement made under that act by which any seaman consents to abandon any right to salvage shall be wholly inoperative (*e*).

Where vessels sail as consorts, and under an agreement to give to each other mutual protection, a claim for salvage cannot be founded on services performed by the crew of one in assisting the other (*f*). But where a custom was alleged to exist in the whale fisheries for vessels to assist each other gratuitously in time of danger, it was held that, assuming its existence, it could not apply to a ship which was not embarked in any joint enterprize with the vessel in peril, but which had gone out from this

(*x*) *The Helen and George*, Swab. A. R. 368.

(*y*) *The Crus V.*, 1 Lush. A. R. 583.

(*z*) *The Samuel*, 15 Jur. 407.

(*a*) *The William Brandt*, cited 2 W. Rob. 172. See also the judgment of the Privy Council in *Ward v. McCorkill*, 15 Moo. P. C. C. 133, cited *ante*, p. 479, note (*i*).

(*b*) The Court of Admiralty will hold the salvors to such an agreement, though it be a hard bargain, *The Firefly*, Swab. A. R. 240. Nor will such an agreement be lightly set aside because of a subsequent alteration in the weather, which renders the duty more onerous than was at first anticipated. *The Jonge Andries*, Swab. A. R. 226; *S. C.*, in *P. C.*, *nomine Halsey v. Albertussen*, 11 Moo. P. C. C. 313. See *post*, p. 504,

the provisions of the M. S. Act, 1854, as to voluntary agreements made by salvors to abandon their lien and abide the decision of a Court of Admiralty, upon security being given them by the master or person in charge of the ship.

(*c*) *The Britain*, 1 W. Rob. 40; *The Sarah Jane*, 2 W. Rob. 110.

(*d*) *The Louisa*, 2 W. Rob. 22.

(*e*) M. S. Act, 1854, s. 182. This provision does not apply to the case of any stipulation made by the seamen of any ship which, according to the terms of the agreement, is to be employed on a salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by the ship to other ships. See the M. S. A. Amendment Act, 1862, s. 18.

(*f*) *The Zephyr*, 2 Hagg. 43.

country expressly to render assistance (*g*). The East India Company was held not to be exempt from the payment of salvage to the crew of a ship chartered to them for services rendered to a ship which belonged to them (*h*). Where the crews of two ships belonging to the same owner assisted another ship which was not only chartered to him, but of which he had appointed the master and crew, and which carried a cargo belonging to him, the Court refused to award salvage against the owners of the chartered vessel (*i*).

Salvage being earned by the personal exertions of the master and crew, it follows that, where a vessel is under charter, the charterer has no claim to reward for salvage services performed by the ship, unless the right to the benefit of any salvage is given to him in express terms by the charter-party (*k*).

The effect of the performance of salvage services by Queen's ships will be mentioned in a later part of this Chapter (*l*).

Salvors have a lien at common law on the property rescued, and may retain it until they are remunerated (*m*). In the Court of Admiralty, also, salvage services have always been deemed to give a maritime lien on the ship, although the salvors may not have possession of her (*n*).

REMEDIES OF
SALVORS.
Lien.

The right of salvage may be determined by a Court of law in an action brought by the claimant upon the implied contract to remunerate him, or in an action by the owner of the ship or goods for their detention (*o*). No action can be brought by a seaman against the owner of his ship for his share of salvage money awarded to the owner by justices acting under the provisions of the Merchant Shipping Act, 1854, and paid to him, no apportionment of the salvage having been made by the justices (*p*).

Salvors may also enforce their claims either by a suit in the

(*g*) *The Swan*, 1 W. Rob. 68. This custom was also set up in *The Margaret*, 2 Hagg. 48, note, but was not established. Although such a custom has been held not to deprive of the right to salvage, it may affect the amount awarded. See the judgment of Lord Stowell in *The Trelawney*, 4 Rob. 228.

(*h*) *The Waterloo*, 2 Dods. 433.

(*i*) *The Maria Jane*, 14 Jur. 857.

(*k*) *The Alfen*, Swab. A. R. 189.

(*l*) *Post*, p. 502.

(*m*) *Hartford v. Jones*, 1 Ld. Raym. 393. See also the judgment of Eyre,

C. J., in *Nicholson v. Chapman*, 2 H. Bl. 257; *Baring v. Day*, 8 East, 57.

(*n*) *The Gustaf*, 1 Lush. A. R. 506. In this case a salvage lien was held to be entitled to priority over the possessory lien of a shipwright, into whose yard the vessel came after the salvage services had been rendered.

(*o*) *Newman v. Walters*, 3 B. & P. 612; 2 Chit. Plead. 54. The remedy by action is now rarely resorted to.

(*p*) *Atkinson v. Woodhall*, 1 H. & C. 170; and see *post*, p. 489.

Court of Admiralty against the ship, freight, or goods; or, in certain cases, by proceedings before magistrates, under the Merchant Shipping Act, 1854, sect. 460 (*q*).

Suits in Court
of Admiralty.

The Court of Admiralty has, by ancient usage, jurisdiction over all salvage cases arising on the high seas. By modern statutes the jurisdiction of this Court has also been extended to cases in which the ship saved was within the body of a county at the time when the services were rendered (*r*). And by the Merchant Shipping Act, 1854, sect. 476, it is expressly provided, that, subject to the provisions of that act, the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck was found at sea or cast upon the land, or partly in the sea and partly on land. This Court has also power to deal with all questions as to the title to or ownership of any ship, or the proceeds thereof remaining in the registry of the Court, which arise in any cause of salvage (*s*). The jurisdiction of the Court is not ousted by the fact that the parties have entered into an agreement to refer the claim in dispute to arbitration (*t*); nor is the remedy of salvors in this Court in any way affected by their abandoning the possession of the vessel which they have saved (*u*).

By the Vice-Admiralty Courts Act, 1863 (26 Vict. c. 24), sect. 10, jurisdiction is given to the Colonial Vice-Admiralty Courts established under that act in all cases of claims in respect of salvage of any ship or of life or goods therefrom.

Proceedings
under the
Merchant
Shipping Act,
1854.

The provisions of the Merchant Shipping Act, 1854, with reference to salvage, were contained in the Eighth Part of that act; they have been amended and extended by the Merchant Shipping Act Amendment Act, 1862.

(*q*) See *post*, p. 489. Before this act these proceedings were regulated by the 9 & 10 Vict. c. 99, which is now repealed. See as to the recovery of salvage within the jurisdiction of the Cinque Ports, *post*, p. 500.

(*r*) 3 & 4 Vict. c. 65, s. 6; 9 & 10

Vict. c. 99, s. 40, which last-mentioned act is now repealed.

(*s*) 3 & 4 Vict. c. 65, s. 4.

(*t*) *La Purísima Concepcion*, 13 Jur. 545.

(*u*) *The Eleanora Charlotta*, 1 Hagg. 156.

It will be convenient to state first how the law stood under the earlier act, and then to mention the provisions of the later statute.

By sect. 460 of the Merchant Shipping Act, 1854, it was provided, that whenever a dispute with respect to salvage arose in the United Kingdom, elsewhere than within the boundaries of the Cinque Ports (*x*), between the owners (*y*) of a ship, boat, cargo, apparel, or wreck (*z*), and the salvors, as to the amount of salvage, and the parties to the dispute could not agree as to the settlement of the claim by arbitration or otherwise, if the sum claimed did not exceed 200*l.*, the dispute should be referred to the arbitration of any two justices of the peace resident (in cases of wreck) at or near the place where the wreck was found, and (in cases of salvage) at or near the place where the ship or boat was lying, or at or near the first port or place in the United Kingdom into which the ship or boat was brought after the occurrence of the accident.

By the same section it was provided that if the sum claimed (*a*) Arbitration. exceeded 200*l.*, the dispute might, by consent, be referred to arbitration in the manner above mentioned; but if the parties did not consent to this course, the question should be determined, in England and Ireland, by the Court of Admiralty, and in Scotland by the Court of Session. If, however, the claimants did not recover a greater sum than 200*l.*, they were not, under the provisions of this act, to recover any costs, charges, or expenses (*b*), unless the Court certified that the case was a fit one to be tried in a superior Court. It was also provided by this section that every dispute with respect to salvage might be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged, or of their agents.

(*x*) Salvage disputes within the Cinque Ports are still determinable as before the passing of this act. See *post*, p. 500.

(*y*) The word "owner," as here used, has been held to include mortgagees. *The Louisa*, 11 W. R. 614.

(*z*) As to what is "wreck," see *ante*, p. 482.

(*a*) As to the meaning of these words, see *The William and John*, 32 L. J., P. M. & A. 102, and *post*, p. 493.

(*b*) This limitation as to costs was held to extend only to cases where the salvage service was performed within the limits of the United Kingdom, that is, within three miles of the coast. See *The Actif*, Swab. A. R. 237; *The Leda*, Swab. A. R. 40; see also the observations of Dr. Lushington in *The Fenix*, Swab. A. R. 16, as to the principles upon which the Admiralty Court will act in certifying that a case is fit to be tried there.

By sect. 461 of the Merchant Shipping Act, 1854, it was provided that whenever in pursuance of the act any dispute as to salvage was referred to the arbitration of justices, they might either determine the matter themselves (with the assistance, if they wished it, of an assessor), or they might appoint some person conversant with maritime affairs to act as umpire (c).

Appeal.

By sect. 464, an appeal was given against the award, in the cases mentioned above, to the Court of Admiralty in England and Ireland, and to the Court of Session in Scotland, whenever the sum in dispute (d) exceeded 50*l.* (e). And by sect. 465, it was enacted that the justices should, in cases of appeal, transmit to the Court of Appeal a copy of the proceedings before them or their umpire, and of the award, together with a certificate of the gross value of the article in respect of which the salvage was claimed.

Payment of amount over to, and duties of, receivers.

By sects. 466 and 467 of this act, whenever the amount of salvage payable in respect of salvage services rendered in the United Kingdom had been finally ascertained by agreement or award, but a dispute arose as to the apportionment of it amongst several claimants, the person liable to pay the salvage might (if the amount did not exceed 200*l.*) pay it over to the receiver of the district; and upon the receipt of the money, and the granting of a certificate of the payment by the receiver, the person liable to pay the salvage was discharged as well as his property in respect of the claim in question; and the amount so paid to the receiver might be distributed by him as he thought fit (f).

The following rules were laid down by sect. 468 of the act with reference to the duties of the receiver:—

(1.) If any salvage was due to any one under the act for

(c) By ss. 461—463 it was declared, that the awards must be made within forty-eight hours after the question had been referred, unless the time was enlarged by the referees; that the assessor or umpire should receive for his services such a sum not exceeding 5*l.*, as the Board of Trade might direct; and that the costs of the arbitration should be in the discretion of the referees.

(d) As to the meaning of these words, see *The Andrew Wilson*, 32 L. J., P. M.

& A. 104, and *post*, p. 493.

(e) The same section provided, that notice of appeal must be given to the justices within ten days after the date of the award, and that the proceedings must be commenced in the Court of Appeal within twenty days from that date.

(f) As to the principles upon which the receivers act in making the apportionment, see *post*, p. 494, note (g).

services rendered in assisting any ship or boat, or saving the lives of persons belonging to her, or the cargo or apparel, the receiver was to detain the ship or boat, and the cargo and apparel, until payment of the salvage, or process had been issued by some competent Court for their detention ;

- (2.) If the salvage was due in respect of the saving of any wreck (and the wreck was not sold as unclaimed), the receiver was to detain it until payment, or the issuing of process, as above mentioned.

But the receiver might (where no such process had been issued), release from his custody the ship, boat, cargo, apparel, or wreck, upon security being given to him for the amount of salvage due (*g*).

By sect. 469 of this act, it was provided that the receiver might sell any ship, boat, cargo, apparel, or wreck detained by him for non-payment of salvage, rendering the overplus to the owners after payment of salvage fees and expenses, in the following cases (*h*) :—

- (1.) Where the amount of salvage not being disputed was not paid within twenty days after it became due ;
- (2.) Where the amount being disputed no appeal lay from the first tribunal to which the question was referred, and payment had not been made within twenty days after its decision ;
- (3.) Where the amount being disputed an appeal lay to

(*g*) It was provided by ss. 468, 495 and 497 of this act, that where the claim for salvage exceeded 200*l*., the Court of Admiralty might determine as to the amount of security and sufficiency of the sureties, and whenever the bond or other security given to the receiver was for an amount exceeding 200*l*., proceedings might be instituted in that Court by either of the parties for the purpose of having the questions arising between them adjudicated on, and the Court might enforce payment of the security as if bail had been given; and that these bonds should be exempt from stamp duty. See *post*, p. 504, as to voluntary agreements by salvors to give up their lien upon security being given them. Where a receiver of wreck releases salvaged property upon security, the salvors have no right to detain it, or to arrest it by warrant from the Admi-

ralty Court. *The Lady Katherine Barham*, 1 Lush. A. R. 404.

(*h*) By s. 470 of this statute it was provided, that the owners of any wreck who established their claim within a year from the date at which it came into the receiver's possession, should be entitled to have it delivered up to them, subject to the above-mentioned deductions. By s. 498 of the act it was provided, that whenever the amount of salvage had been ascertained and exceeded 200*l*., the Court of Admiralty should have power to apportion it among the persons entitled. By s. 52 of the M. S. A. Amendment Act, 1862, the delivery up of any wreck by any receiver does not affect any question as to the right or title to the wreck that may be raised by third parties, or as to the title to the soil on which the wreck is found. See *post*, p. 507.

another tribunal, but the amount was not paid within twenty days after the decision of the first tribunal, and no proceedings in appeal had been taken within that period.

These are the main provisions of the Merchant Shipping Act, 1854, with reference to salvage; they are still in force, subject to this important addition and amendment:—all the provisions in the Eighth Part of this act giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation, now extend (by the operation of the Merchant Shipping Act Amendment Act, 1862) to cases in which the value of the property saved does not exceed 1,000*l.*, and also to cases in which the salvage services have been rendered out of the limits of the United Kingdom.

Proceedings under extended jurisdiction given by the Merchant Shipping Act Amendment Act, 1862.

By sect. 49 of the Merchant Shipping Act Amendment Act, 1862, the above-mentioned provisions of the Eighth Part of the Merchant Shipping Act, 1854, are amended as follows:—

- (1.) These provisions are extended to all cases in which the value of the property saved does not exceed 1,000*l.*, as well as to the cases provided for by the Merchant Shipping Act, 1854;
- (2.) They are to be held to apply whether the salvage service has been rendered within the limits of the United Kingdom or not;
- (3.) One of the principal secretaries of state, or in Ireland the lord lieutenant or other chief governor or governors, may appoint out of the justices for any borough or county a rota of justices, by whom jurisdiction in salvage cases shall be exercised;
- (4.) When no such rota is appointed, the salvors may, by writing addressed to the justice's clerk, name one justice, and the owner of the property saved in like manner may name the other;
- (5.) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at petty sessions;
- (6.) Any stipendiary magistrate, and in England any county court judge, and in Scotland any sheriff or sheriff substitute, and in Ireland the recorder of any borough or the chairman of quarter sessions in any county, may

exercise the same jurisdiction in salvage cases as is given to two justices;

- (7.) One of the principal secretaries of state may determine a scale of costs to be awarded in salvage cases by justices or Courts *(i)* acting under these provisions;
- (8.) All the provisions of the Merchant Shipping Act, 1854, relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in these cases, are, except so far as the same are altered by the later act, to extend and apply to all the proceedings under both the statutes.

It is also provided by sect. 50 of the Merchant Shipping Act Amendment Act, 1862, that whenever any salvage question arises the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the claim is made, and must, when the valuation is returned to him, give a copy of it to both parties; and any copy of this valuation, purporting to be signed by the valuer, and attested by the receiver, is receivable in evidence in any subsequent proceeding *(j)*.

It has been held in the Court of Admiralty that the meaning of these two statutes taken together is, that if the sum claimed does not exceed 200*l.*, or if the property salvaged does not exceed 1,000*l.*, the dispute must be referred to the justices, or other summary jurisdiction, and the authority of the Court of Admiralty is taken away *(k)*. It has also been held by that Court that the limitation of the jurisdiction of the Court of Admiralty by these acts to cases where the claim is over 200*l.*, and the value of the property saved does not exceed 1,000*l.*, depends (so far as relates to the sum claimed) on the claim made antecedently to any proceedings *(l)*. So, the words "sum in dispute," as used in sect. 464 of the Merchant Shipping Act, 1854, have been held to refer to the sum originally claimed, and not to the sum awarded and appealed against *(m)*.

(i) The scale of fees and costs which has been issued by the Secretary of State in pursuance of the above provision, will be found *post*, App. p. ccxciii.

(j) By s. 51 of this act the words "Court of Session," used in s. 468 of the M. S. Act, 1854, are to be deemed to include either division of the Court,

or the Lord Ordinary officiating on the bills during vacation.

(k) *The William and John*, 32 L. J., P. M. & A. 102.

(l) *Ib.*

(m) *The Andrew Wilson*, 32 L. J., P. M. & A. 104.

**AMOUNT
AWARDED, AND
HOW APPOR-
TIONED.**

General rules.

The Court of Admiralty acts in awarding salvage on liberal principles (*n*). In cases of ordinary salvage (*o*) the amount awarded bears no fixed proportion to the extent of the property saved, but depends in each particular case upon the value of that property, the danger from which it has been rescued, the time expended, the expense incurred by the salvors, and the success of their efforts (*p*). The Court looks also not merely to the exact *quantum* of service performed in the case itself, but to the general interests of navigation and commerce, which are protected by exertions of this nature (*q*).

(*n*) See the cases cited below, and the judgments in *L'Espérance*, 1 Dods. 49, and *The William Beckford*, 3 Rob. 355.

(*o*) Before the Prize Acts, the amount of salvage awarded by the Court of Admiralty in cases of re-capture, bore no fixed proportion to the value of the property. See as to these acts, *ante*, p. 481, note (*u*).

(*p*) See *The Salacia*, 2 Hag. 262; and the judgments in *The Thetis*, 3 Hag. 62; *The Ewell Grove*, *ib.* 221; *The Traveller*, *ib.* 371; *The London Merchant*, *ib.* 895; and *The Industry*, *ib.* 204. See also *The Graces*, 2 W. Rob. 294. With regard to the mode in which salvage of freight should be reckoned, see *The Norma*, 1 Lush. A. R. 124.

(*q*) See the judgment of Lord Stowell in *The William Beckford*, 3 Rob. 355; *The Sarah*, 1 Rob. 313, note; *The Hector*, 3 Hag. 90; *The Industry*, *ib.* 203.

In the instructions to receivers of wreck and droits of Admiralty, issued by the Board of Trade in 1859, the main ingredients of salvage service are described (by Art. 90) as follows:—

- “(1.) The degree of danger from which the lives or property are rescued.
 - (2.) The value of the property saved.
 - (3.) The risk incurred by the salvors.
 - (4.) The value of any of the property by the use of which the services are rendered, and the danger to which it was exposed.
 - (5.) The skill shown in rendering the services.
 - (6.) The time and labour occupied.
- Where all these concur in the performance of any salvage service, the reward ought to be large; and in proportion as fewer of these ingredients are to be found, so should the reward be less.

But where scarcely any, or only the last of them exist, the service can hardly be denominated a salvage service; it is little or nothing more than mere work and labour, and should be rewarded accordingly.

(1.) In estimating the degree of danger from which the lives or property were rescued, regard should be had to,—

The damage sustained by the vessel itself;

The nature of the locality from which she was rescued;

The season of the year when the services were rendered, and if the weather at the time was not tempestuous, the probability or improbability of its becoming so;

Ignorance or knowledge (as the case may be) of the locality on the part of the master and other persons on board the vessel saved.

(2.) The value of the property saved is also an essential ingredient in the amount of remuneration to be awarded. If the value of the property be small, the reward must be small; if large, a greater reward may be given, for in proportion to that value is the *benefit* to the owners, which is one of the primary considerations in settling the amount of remuneration. The amount of the reward should not, however, increase in direct proportion to the value of the property. The object of the Courts is to give an adequate reward, Courts of Admiralty, therefore, always give a smaller proportion when the property is large.

As a general rule it may be stated that Courts of Admiralty very seldom, if ever, give more than one-half of the value of the property saved. This should, in fact, be regarded as the maximum, except in some few cases where

In cases of derelict as much as one half of the value of the property saved is frequently decreed (r). But there is no fixed rule even in these cases, although more than one half or less than one third is rarely given (s). In some cases, indeed, where the claim has been against king's ships, or the property saved

the services have been highly meritorious, and the value of the property saved is but small.

(3.) The risk incurred by the salvors themselves, if necessarily incidental to the performance of the service, is the most important ingredient in estimating the amount of salvage to be awarded. The value of human life is that which is and ought to be principally considered in the preservation of other men's property; and if this be satisfactorily proved to have been hazarded, the salvors should be most liberally rewarded; and when not only risk has been incurred, but actual loss of life has ensued, a still larger amount of salvage should be given.

(4.) The value of the property by which the services have been rendered is not an unimportant element in estimating the reward to be given, provided it has been exposed to risk and danger in the performance of the service. The greater the risk incurred by the salvors or their property, the greater should be the remuneration. It is from the same consideration that no salvage is allowed for the use of her Majesty's ships, or the consumption of stores and articles belonging to her Majesty, as even were the vessel totally lost in rendering the services, the loss would not fall on the salvors.

(5.) The skill and knowledge of the salvors is an essential ingredient in a meritorious salvage service. The same skill, however, that would be required from duly licensed pilots, is not to be expected from ordinary smackmen or boatmen assuming the management of vessels in cases of difficulty; but to entitle such salvors to reward, it must be shown that they possessed skill commensurate with their vocation and condition in life, and adequate to the duties they undertook to perform.

Where the services have been performed by pilots, care should be taken to ascertain that the services were really of a salvage nature, and that the vessel was actually in distress; for otherwise they must be rewarded merely as pilotage. The rate of remuneration to pilots

has, under the provisions of the Pilot Acts, been fixed on a liberal scale, and in return they are bound to afford their assistance in all weathers, except at the risk of their lives. It is, however, a settled doctrine of the Court of Admiralty, that pilots may claim as salvors in circumstances of great danger, or where other than mere pilotage services have been required of them. No pilot is bound to take charge of a vessel in distress for mere pilotage reward, and if he do take charge of a vessel so circumstanced, he is entitled to a salvage remuneration. In all such cases, the skill and knowledge possessed by persons of this class fairly entitle them to a liberal reward."

(r) See *L'Espérance*, 1 Dods. 46; and the judgments in *The Fortuna*, 4 Rob. 194; and *The Blendenhall*, 1 Dods. 421; also *The Elliotta*, 2 Dods. 75; *The Effort*, 3 Hagg. 165; *The Watt*, 2 W. Rob. 70; and *The Sarah Bell*, 4 Notes of Cases, 146, and the judgment in *Gore v. Bethel*, 12 Moo. P. C. C. 189. The reason why a higher reward is usually given where the ship or goods are derelict is that these are cases of great danger to the property saved. See the judgment of Dr. Lushington in *The Florence*, 16 Jur. 578. In order to constitute derelict, it is not necessary that no owner should afterwards appear; it is sufficient that there has been an abandonment at sea by the master and crew without hope of recovery. A mere quitting of the ship, however, in consequence of imminent danger, or for the purpose of procuring assistance from the shore, or with an intention of returning to her again, is not an abandonment. See the judgment of Lord Stowell in *The Aquila*, 1 Rob. 40; *The Barefoot*, 14 Jur. 841; *The Pickwick*, 16 Jur. 669; *The Fenix*, Swab. A. R. 13.

(s) See *The Aquila*, 1 Rob. 37; *The Fortuna*, 4 Rob. 78; and the judgments in *The Effort* and *L'Espérance*, *ubi supra*. In *The Frances Mary*, 2 Hagg. 89, and *The Reliance*, *ib.* 90, note, the Court gave a moiety, and ordered that the costs should be paid out of the other moiety. In America it is held, that there is no valid

has been very small (*t*), or the salvage operations have been of long continuance (*u*), or effected by expensive machinery (*x*), a larger proportion than a moiety has been allowed. But these cases have been either cases of derelict, or cases of a very peculiar nature; and it has been laid down, that in no case, however meritorious the service may have been, does the Court of Admiralty decree to the salvors more than a moiety of the proceeds of the property saved (*y*).

The amount commonly allowed has been one third or one quarter of the net proceeds of the property saved, whilst in some cases a fifth, sixth, or tenth only, has been awarded (*z*). And where the service has been of a very trivial nature even less has been given (*a*).

The use by the salvors of steam power has often been recognized by the Court as a ground for awarding high salvage, since this power is expensive to the salvors, and usually very efficacious to the ship in distress (*b*).

The Court usually gives a smaller proportion of the value of the property saved where the value is large, and a higher proportion where it is small; for in the latter case the award of a small proportion would not hold out a sufficient encouragement to salvors (*c*).

It is a settled rule that a Court of Appeal will not interfere with the amount of salvage awarded by the Court below, unless the judgment appears to be clearly erroneous, or the case is of an extraordinary character (*d*).

reason for fixing the reward for salvaging derelict property at not more than a half, or less than a third, of the property saved, and that the true principle in all cases is to give adequate reward according to the circumstances of the case. *Post v. Jones*, 19 How. (American) Rep. 150.

(*t*) See the judgment in *The Britannia*, 3 Hagg. 154.

(*u*) *The Jonge Bastiaan*, 5 Rob. 322.

(*x*) *The Jubilee*, 3 Hagg. 43, note.

(*y*) *Gore v. Bethel*, 12 Moo. P. C. C. 189.

(*z*) For the proportions of salvage awarded in particular cases, see Pritchard's Admiralty Digest, tit. Salvage.

(*a*) *The Red Rover*, 3 W. Rob. 150.

(*b*) *The Raikes*, 1 Hagg. 246; *The London Merchant*, 3 Hagg. 394; *The Earl Grey*, *ib.* 363; *The Shannon*, 11 Jur.

1045; *The Martin Luther*, Swab. A. R. 287; *The Spirit of the Age*, *ib.* 286. In the instructions by the Board of Trade to the receivers of wreck, it is said (in Article 91), that, "when the services have been rendered by steam-vessels, they are always considered as entitled to a very liberal reward, not only on account of the great value of the property which is thereby exposed to risk, but because of the great skill and power of vessels of that description, and the expedition with which services are generally performed by them."

(*c*) See the judgments of Lord Stowell in *The Blendenhall*, 1 Dods. 421, and in *The Waterloo*, 2 Dods. 442.

(*d*) *Gann v. Brun*, 12 Moo. P. C. C. 341; and *Green v. Bailey*, *ib.* 346.

The Court of Admiralty has always exercised the right of apportioning salvage where there has been more than one claimant. The Merchant Shipping Act, 1854, contained an express provision in this respect, and provided, by sect. 498, that whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom had been finally ascertained, and exceeded 200*l.*, and whenever the services had been rendered elsewhere, and the amount had been finally ascertained, whatever it might be, if any delay or dispute arose as to the apportionment, any Court having Admiralty jurisdiction might cause it to be apportioned amongst the persons entitled, in such manner as it might think just; and might for that purpose appoint a person to carry the apportionment into effect, and compel any person in whose hands or under whose control the amount might be, to distribute it, or bring it into Court, to be dealt with as the Court might direct^(e).

Provisions of the Merchant Shipping Act, 1854, and of the Merchant Shipping Act Amendment Act, 1862.

Powers of Courts of Admiralty, and rules under which receivers of wreck act.

(e) See as to apportionment of salvage by the Court of Admiralty, *The Enchantress*, 1 Lush. A. R. 93, and *The Princess Helena*, *ib.* 190. The following are the instructions issued by the Board of Trade to receivers of wreck, with reference to the apportionment of salvage. See Article 93 of the Instructions issued in 1859.

"The principles which regulate the apportionment of a salvage reward amongst the parties entitled thereto are, in most cases, comparatively simple. The cases which will fall within the cognizance of the receivers will generally be found to belong to one or other of the following classes. Where the salvage services have been rendered:—

- (1.) By revenue cruisers or coast-guard men.
- (2.) By smacksmen, boatmen, or fishermen.
- (3.) By landsmen or beachmen.
- (4.) By the master and crew of some vessel.

(1.) As regards the first class of salvors (the revenue cruisers and coast-guard men), rules have been laid down for the distribution of rewards of all kinds amongst the officers and men engaged; and the receivers should therefore pay over the whole amount due to the officers and men to the inspecting commander of the district, who will distribute the same under the authority of

the comptroller-general of the coast-guard. A special report should be made by the inspecting commander in cases where special skill or enterprise have been shown, or special risk incurred by any individual, in order that directions may be issued, if necessary, for giving a special reward.

(2.) With regard to the second class of salvors (the smacksmen, boatmen and fishermen), it will generally be found that there is a scale of distribution recognized and agreed upon amongst them; the smack or boat has a certain number of shares, and the remainder belong to the master and crew in certain agreed proportions. Where such a scale exists it should be strictly adhered to in making an apportionment of salvage; unless, indeed, any one or more of the men have shown great skill and enterprise, or incurred greater risk than the others, when an exception may sometimes be made in their favour.

Where, however, salvage has been awarded to the crew of a smack or boat, amongst whom there is no such agreed scale of distribution, the receivers will do well, in making the apportionment, to follow the scale of distribution generally adopted amongst the smacksmen and boatmen in the neighbourhood, as such agreements are generally found to be based upon principles of justice and equity, and are such as best conduce to the interests of the community by whom

These provisions must now be read together with the provisions of sect. 49 of the Merchant Shipping Act Amendment Act, 1862, which have been already mentioned (f).

Effect of misconduct of salvors.

Where salvors have acted negligently or unskilfully, although their services have been on the whole meritorious, or they have misconducted themselves by making extortionate demands or otherwise, the Court of Admiralty has awarded to them a smaller amount of salvage than would otherwise have been given (g). And in some cases in which the salvors have impro-

they have been adopted.

Where a cargo of fish has been spoiled or injured in rendering the salvage service, care should be taken, in making the apportionment, to ascertain upon whom the loss will fall, and a corresponding allowance should be made to them.

(3.) With regard to the third kind of salvors (beachmen and landmen), it will generally be proper to divide the salvage equally amongst them all. They will, probably, in most instances, be found to belong to the same class in life, to have incurred the same risk and the same amount of labour, and to have shown the same skill in the performance of the services. Should any of them have, however, greatly distinguished themselves, it will be proper to give them a larger proportion of the salvage award.

(4.) The fourth class of cases (where the salvage services have been rendered by a vessel and her master and crew) will be found by the receivers to be the most difficult, as the apportionment must depend upon a consideration of the whole circumstances of the case, and whether the preservation of the property is due principally to the services of the salving vessel herself, or to the personal exertions and risk incurred by the master or the crew. As a general rule it may be stated, that where the services have been chiefly performed by the vessel herself, as in the case of a derelict, where the property has been towed into a place of safety, one half of the salvage reward is given to the owners of the salving vessel, from one fourth to one eighth to the master, and the remainder amongst the crew in proportion to their wages. This is the scale of distribution usually adopted, where the salvage services have been performed by steamers, and where it may generally be said that success is

due chiefly to the power and construction of the vessel herself. Where, however, the principal part of the services has not been rendered by the vessel, and where the vessel has not been exposed to any risk or danger, but where the preservation of the property is due in great measure to the personal exertions of the master and crew, then a much smaller portion of the salvage is awarded to the owners of the vessel. It is, however, a question of appreciation, dependent entirely upon the circumstances of each particular case, and in regard to which no positive general rule can be laid down. The greater the risk to the master and crew and the less the risk to the vessel, the greater must be the proportion awarded to the actual salvors, and the less to the owners of the salving vessel.

Finally, it should be observed that apprentices are entitled to share in an allotment of salvage; and that the master or the owners of the vessel cannot claim the shares which may fall due to their apprentices; and also, that if a contract giving up or making over any claim to salvage, to any person whatever, is made by any seaman or apprentice prior to the accruing of such claim, such contract is absolutely void, as being against equity, public policy, and positive enactment. See the M. S. Act, 1854, s. 233." The Court of Admiralty, in exercising the jurisdiction given to it by the provisions of this act, will decree an equitable apportionment, unless an equitable agreement be proved, or an equitable tender has been made. *The Enchantress*, 1 Lush. A. R. 93.

(f) *Ante*, p. 492.

(g) *The John and Thomas*, 1 Hagg. 157, note; *The Dantzic Packet*, 3 Hagg. 383; *The Black Boy*, *ib.* 386, note; *The Glasgow Packet*, 2 W. Rob. 306; *The Dossilet*, 10 Jur. 865; *The Cape Packet*,

perly interfered and resisted the authority of the owners of the vessel in distress, or have been guilty of wilful or criminal misconduct (*h*), or there has been great negligence and delay on their part (*i*), or the means adopted have been improper (*k*), the Court has refused to award any salvage whatever.

It is provided by sect. 450 of the Merchant Shipping Act, 1854, that the finder of any wreck who does not comply with the provisions of the act as to giving notice of it, or delivering it up to the receiver of wreck of the district, shall forfeit all claim to salvage.

Those who remain on board the salving vessel are usually entitled to share in the salvage, provided they are also ready to encounter the peril (*l*). A distinction in amount, however, is usually made in favour of those who are actually engaged in the service (*m*). Where part of the crew of a light ship assisted in rendering a salvage service, the Court refused to award any part of the salvage to those of the crew who remained on board (*n*).

Allotment to part of crew not actually engaged.

Where two vessels come up together to a ship in distress, all of both crews are entitled to be considered as salvors, although a part only is actually employed (*o*).

The claim of the owners of salving vessels, who do not personally assist in the service to share in the salvage, is usually considered as very slight. It is otherwise, however, if their property is exposed to considerable danger, or diverted from a lucrative employment, or if they incur a real loss or inconvenience (*p*). So, those who furnish boats, or other articles for salvage service, but do not assist in person, are not usually

To owners of boats, &c.

3 W. Rob. 122; *The Charles Adolphe*, Swab. A. R. 153; *The Atlas*, 1 Lush. A. R. 518.

(*h*) *The Barefoot*, 14 Jur. 841; *The Atlas*, *ubi supra*.

(*i*) *The City of Edinburgh*, 2 Hagg. 333.

(*k*) *The Neptune*, 1 W. Rob. 297; *The Duke of Manchester*, 2 W. Rob. 470; S. C., 6 Moo. P. C. C. 90. In this case, and in *The Barefoot*, 14 Jur. 841, the claims of the salvors were dismissed with costs.

(*l*) *The Baltimore*, 2 Dods. 132; *The Charlotte Wylie*, 2 W. Rob. 495.

(*m*) See *The Jane*, 2 Hagg. 338; *The*

Sarah Jane, 2 W. Rob. 110.

(*n*) *The Emma*, 3 W. Rob. 151.

(*o*) *The Mountaineer*, 2 W. Rob. 7.

(*p*) See the judgment in *The Jane*, 2 Hagg. 343; *The Waterloo*, 2 Dods. 433; *The Vine*, 2 Hagg. 1; *The Salacia*, *ib.* 262; *The Martha*, 3 Hagg. 436; *The Louisa*, 3 W. Rob. 99. In apportioning salvage, the Court considers every vessel as uninsured, and will not award a larger amount to the owners, because by rendering the service they incurred a risk of forfeiting a policy of insurance on their ship. *The Duncannon*, 1 W. Rob. 180.

entitled to be paid salvage, but only a fair remuneration for the use of the articles which they have supplied (*q*).

To second
salvors.

Where several independent parties co-operate in assisting a vessel, the Court awards salvage according to the merit of the respective claims. Where the first salvors had incurred considerable danger, and their conduct had been meritorious, the Court allotted to them a large share of the salvage, although their efforts had produced no important result before the arrival of the other assistance (*r*).

The Court of Admiralty has always been jealous in maintaining the rights of original salvors (*s*). It requires persons who disturb their possession to show clearly that a necessity for their interference existed, or that their services were adopted (*t*). The first salvors are not, however, justified in resisting the master's authority, or in attempting to exclude further assistance where it is necessary (*u*). For, except in cases of derelict, where the first occupant has a right of exclusive possession if he can alone save the property, salvors act only under the sufferance and permission of the master, or other person in command of the vessel in distress (*x*).

Remuneration
for services by
coast guard.

It is provided by sect. 20 of the 18 & 19 Vict. c. 91, that where services are rendered by officers or men of the coast-guard service in watching or protecting shipwrecked property, they are to be remunerated by the owners according to a scale to be fixed by the Board of Trade, unless the services have been declined, or salvage has been claimed and awarded in respect of them.

SALVAGE
WITHIN JURIS-
DICTION OF
CINQUE
PORTS.

The determination of salvage claims arising within the boundaries of the Cinque Ports is still regulated by the 1 & 2 Geo. 4, c. 76, and the 9 Geo. 4, c. 37; for it was provided by sect. 460 of the Merchant Shipping Act, that disputes arising within this district should be determined in the same manner as before

(*q*) *The Vine*, 2 Hagg. 1; *The Charlotte*, 3 W. Rob. 68.

(*r*) *The Genesee*, 12 Jur. 401.

(*s*) See the judgments in *The Charlotte*, 2 Hagg. 364; *The Glory*, 14 Jur. 678; *The Pickwick*, 16 Jur. 670; *The Effort*, 3 Hagg. 165; and *The Glasgow Packet*, 2 W. Rob. 313.

(*t*) See the judgments in *The Blendenhall*, 1 Dods. 416; *The Maria*, Edw. 177; and *The Eugene*, 3 Hagg. 160.

(*u*) *The Dantzic Packet*, 3 Hagg. 383; *The Glory*, *ubi supra*.

(*x*) See the judgment in *The Dantzic Packet*, *ubi supra*.

the passing of that act(*y*). The first of these acts empowers the Lord Warden of the Cinque Ports to nominate under his hand and seal three or more commissioners in each of the Cinque Ports, two ancient towns(*z*), and their members, to adjust differences relating to salvage which may arise between the masters of vessels and persons bringing cables and anchors ashore. Where vessels are forced or cut from their cables and anchors by any accident, and leave the same in any place within the jurisdiction of the Cinque Ports, two ancient towns, or their members, the commissioners are to determine any salvage claim within twenty-four hours after it is referred to them(*a*). They have power also, if the master or owner of the ship or goods or his agent is present at the place where they are sitting, to decide upon all claims made by pilots, boatmen, or others, for services of any sort rendered to any ship, either by carrying off to her anchors, cables, or stores, from any part of the coast within the jurisdiction, or by conducting her to any place within the jurisdiction, and upon all claims for the saving, within the jurisdiction, of any goods which are wrecked, stranded, or cast away from any ship; and they may decide on such claims for services rendered to shipping, whether the ships were in distress or not(*b*). The commissioners can act only in the ports or places in which they are resident, or from which their usual place of residence is not distant more than a mile(*c*).

Persons who are dissatisfied with the decision of the commissioners may, within eight days after the award is made, but not afterwards, declare to the commissioners their desire to appeal. The appeal may be either to the Court of Admiralty of the Cinque Ports, or to the High Court of Admiralty, and the decision of either of these Courts is final(*d*). The appellant must,

(*y*) The latter of these acts extends to the deputy warden the powers given by the former to the warden. The extent of the jurisdiction of the Cinque Ports, for the purposes of the act, is defined by s. 18 of the 1 & 2 Geo. 4, c. 76. The High Court of Admiralty has a concurrent jurisdiction within the boundaries of the Cinque Ports, and this is unaltered by the Merchant Shipping Act, 1854. See *The Maria Luisa*, Swab. A. R. 67. The jurisdiction of the lord warden, in relation to civil suits and proceedings, was abolished by the 18 & 19 Vict. c. 48, and the 20 & 21 Vict. c.

1, but the jurisdiction of the lord warden and Court of Admiralty relating to the adjustment of salvage, and in respect of flotsam, jetsam, and lagan is not interfered with by these statutes. See s. 10 of the 18 & 19 Vict. c. 48.

(*z*) The Cinque Ports are Dover, Sandwich, Romney, Hastings, and Hythe; the two ancient towns are Winchelsea and Rye.

(*a*) 1 & 2 Geo. 4, c. 76, s. 1.

(*b*) *Ib.* s. 2.

(*c*) *Ib.* s. 3.

(*d*) *Ib.* ss. 4 and 5.

within twenty days from the date of the award, take out a monition against the adverse party; and the commissioners are bound to liberate the ship, cargo, or goods, upon bail being given by the owners or their agents in double the amount of the sum awarded (e).

**SALVAGE BY
QUEEN'S
SHIPS.**

There is a peculiar obligation on Queen's ships to assist merchant vessels in distress (f); yet when salvage services are rendered by the officers or crew of a ship of war to a merchant vessel, it has been always considered, apart from any legislative enactment, that they are entitled to reward in the same manner as other salvors, but, as their own property is not risked, to a less extent (g).

Where, however, the assistance given was merely incidental to the general duty of Government vessels, as where the commander of a sloop of war, acting under the directions of a vice-consul, rescued a convict ship from the mutinous crew and convicts on board, no salvage was allowed (h).

Provisions respecting claims for salvage services rendered by Queen's ships were made by the 16 & 17 Vict. c. 131. This act is now, however, repealed (i), and the existing statutory regulations on this subject are to be found in the Merchant Shipping Act, 1854.

Sect. 484 of this act provides, that in cases where salvage services are rendered by any ship belonging to the Queen, or by the commander, or crew, no claim is to be made or allowed for any loss, damage, or risk thereby caused to the ship, or stores, tackle, or furniture, or for the use of any stores, or other articles belonging to the Queen, supplied in order to effect these services, or for any other expense or loss sustained by the Queen by reason of the services.

(e) 1 & 2 Geo. 4, c. 76, s. 4. The Merchant Shipping Repeal Act, 1854 (17 & 18 Vict. c. 120), repealed the 1 & 2 Geo. 4, c. 76, except ss. 1, 2, 3, 4, 5, 15, 16, and 18.

(f) See the judgments of Lord Stowell in *The Mary Ann*, 1 Hagg. 158; and of Sir J. Nicholl in *The Clifton*, 3 Hagg. 121. By an order of the Commissioners of the Admiralty, issued on the 30th January, 1852, officers of Queen's ships were directed not to make any claim for salvage services rendered to vessels in distress unless

the service had been *really important or accompanied with hazard*.

(g) See *The Louisa*, 1 Doda. 317; *The Mary Ann*, 1 Hagg. 158; *The Thetis*, 3 Hagg. 14; 2 Knapp P. C. 390; *The Lustre*, 3 Hagg. 154; *The Ewell Grove*, *ib.* 209; the judgment in *The Rapid*, *ib.* 421; *The Wilsons*, 1 W. Rob. 172; *The Earl of Eglinton*, Swab. A. R. 7; and *The Alma*, 1 Lush. A. R. 378.

(h) *The Francis and Elisa*, 2 Doda. 115.

(i) By the Merchant Shipping Repeal Act, 1854.

By sect. 485, no claim on account of any salvage services rendered to any ship, cargo, or appurtenances by the commander, or crew of any of the Queen's ships is to be finally adjudicated upon unless the consent of the Admiralty has first been obtained; and if any person who has originated proceedings in respect of such a claim fails to prove this consent, the suit is to be dismissed with costs (*k*).

It is provided by sect. 486, that whenever salvage services have been rendered to any ship or cargo at a place out of the United Kingdom and the four adjoining seas by the commander or crew of a Queen's ship, the salvors may, if justified by the circumstances in detaining the property at all, cause it to be taken to a port where there is a consular officer, or a Vice-Admiralty Court. The salvor and the master or other person in charge of the property must each of them, within twenty-four hours after arriving at the port, deliver to the consular officer, or Vice-Admiralty judge, a statement respecting the property in salvage, the particulars of which are given by the act, and which must be verified on oath.

Proceedings
when services
rendered
abroad.

By sect. 487, the consular officer or judge must, within four days after receiving these statements, fix the amount to be inserted in a salvage bond, to be given by the master according to the provisions of the act, to secure the payment of any salvage that may be awarded, which amount must not exceed half the value (according to his estimation) of the property in respect of which salvage is claimed. If either of the above statements is not delivered to the consular officer or judge in the required time, he may proceed *ex parte*, but he can in no case require the cargo to be unladen.

By sect. 488 of the statute, the right to detain the property ceases upon the due execution and delivery to the salvor of this bond.

Sect. 489 contains provisions for additional security in the case of ships owned by persons resident out of the Queen's dominions.

By sect. 490, the consular officer or judge must transmit the

(*k*) The consent is signified by a writing under the hand of the Secretary to the Admiralty; and any document purporting to give the consent, and to

be so signed, is *prima facie* evidence, M. S. Act, 1854, s. 485. See *The Alma*, 1 Lush. A. R. 378.

documents, and a notice of the sum he has fixed for the bond, to the Court of Admiralty of England, or to any Vice-Admiralty Court if the parties are willing that the bond shall be dealt with by that Court (*l*).

Sects. 491, 492 and 493 of the statute provide that these bonds shall bind the owners of the ship, freight, and cargo, and their heirs, executors, and administrators, and empower the Courts of Admiralty to enforce them.

By sect. 494, any salvor who elects not to proceed under the act has no power to detain the property, but may proceed otherwise for the enforcement of his salvage claim as if the act had not been passed; and nothing in the act contained is to abridge or affect the rights of salvors, except in the cases provided for by it.

Voluntary
agreements on
abandonment
of lien.

By sect. 497 of the Merchant Shipping Act, 1854, it is provided, that in all cases where salvage is claimed, whether by Queen's ships or any others, the salvors may voluntarily agree to abandon their lien on the property salvaged, upon the master or other person in charge of it entering into a written agreement, attested by two witnesses, to abide the decision of the Court of Admiralty or of any Vice-Admiralty Court, and giving security to such amount as may be agreed upon. This agreement binds the ship, cargo, freight, and their owners, and may be adjudicated upon and enforced in the same manner as the bonds already mentioned (*m*).

WRECK.

Common law
rights as to.

By the common law of England, if a ship was lost at sea, but the cargo or a portion of it came to land, the goods saved belonged to the Crown (*n*). The strictness of this prerogative was relaxed by very early charters and statutes, and the owners of shipwrecked goods were allowed to retain them if they could

(*l*) All documents made in pursuance of this part of the statute are exempt from stamp duty. See s. 495.

(*m*) When an agreement of this kind is made, statements similar to those required in the case of bonds must be made by the salvors and the master or person in charge of the property salvaged. These statements need not, however, be on oath. M. S. Act, 1854, s. 497. The agreements and statements must be

transmitted as soon as practicable by the salvors to the Court which is to adjudicate on the agreement. *Ib*.

(*n*) 1 Bl. Comm. 291 (by Coleridge). See also Doct. & Stud. Dial. 2, c. 51, where the harshness of this prerogative is complained of, and it is said, that there being in these cases "no cause of forfeiture, but rather a cause of sorrow and heaviness, the law seemeth to add sorrow upon sorrow."

identify them (*o*). By later acts provision was also made for rewarding those persons by whose labour and enterprise shipwrecked property had been saved (*p*).

The rights of the owners, the Crown, and other claimants to property that has been wrecked are now regulated by the Merchant Shipping Act, 1854, and the Merchant Shipping Act Amendment Act, 1862 (*q*).

Wrecks and casualties under the Merchant Shipping Act, 1854, and the Merchant Shipping Act Amendment Act, 1862.

By the first of these acts provision is made for instituting inquiries and holding investigations before magistrates in cases of wreck and casualties, and also for the appointment of receivers of wreck.

By sect. 432 it is provided, that whenever any ship is lost, abandoned, or materially damaged, on or near the coasts of the United Kingdom, or causes loss, or material damage, to another ship on or near these coasts, and whenever loss of life ensues by reason of any casualty to or on board of a ship on or near these coasts, and whenever any of these events happens elsewhere and competent witnesses of it arrive in the United Kingdom, the inspecting officer of the coast-guard, or principal officer of customs, nearest to the place of the occurrence, or near to the place where the witnesses arrive or can be conveniently examined, or a person appointed by the Board of Trade, may make inquiry into the matter (*r*).

By sect. 433, if the person entitled to make this inquiry thinks that a formal investigation is expedient, or if the Board of Trade so directs, application may be made to two justices or to a stipendiary magistrate to hear the case. Where this is done the person entitled to make the inquiry must superintend the management of the case and assist the justices, who are bound, upon its conclusion, to send a statement of the case, and of their opinion upon it, to the Board of Trade (*s*).

(*o*) See 1 Bl. Comm. 291, where charters of Hen. 1 and Hen. 2, and Rich. 1, are cited; and the statutes 3 Edw. 1, c. 4; 4 Edw. 1, stat. 2, s. 2; and 27 Edw. 3, stat. 2, c. 13. See also Woolrych on the Law of Waters and Sewers, p. 11.

(*p*) See the 12 Anne, stat. 2, c. 18; the 26 Geo. 2, c. 19; the 49 Geo. 3, c. 122; the 53 Geo. 3, c. 87; and the 1 & 2 Geo. 4, c. 75. All these acts were repealed by the 9 & 10 Vict. c. 99,

which was repealed by the Merchant Shipping Repeal Act, 1854.

(*q*) The act in force before the passing of the M. S. Act, 1854, was the 9 & 10 Vict. c. 99.

(*r*) All the powers given by the act to inspectors appointed by the Board of Trade are vested in these persons. M. S. Act, 1854, s. 432.

(*s*) By the M. S. Act, 1854, s. 434, a nautical assessor may be appointed in cases in which nautical skill and know-

The act, by sect. 436, gives to the justices a power over the costs of the inquiry, and provides that they shall be recoverable in the same manner as costs incurred in summary proceedings (t).

We have already seen that Naval Courts at foreign stations have, under the statute, power to inquire into the wreck or abandonment of British ships or crews (u).

**Appointment
and duty of
receivers.**

The Merchant Shipping Act, 1854, gives (by sect. 439) to the Board of Trade the general superintendence of all matters relating to wreck; and empowers the Board, with the consent of the Commissioners of the Treasury, to appoint any officer of Customs, of the coast-guard, or of Inland Revenue, or, when it appears to the Board to be more convenient, any other person, to be a receiver of wreck in any district.

By sect. 440, no admiral, vice-admiral, or other person, under whatever denomination, exercising Admiralty jurisdiction, as such, by himself or his agents, may receive, take, or interfere with any wreck except in the cases provided by the act.

The statute defines, in detail, the duties of receivers of wreck whenever any ship or boat is stranded or in distress on the sea-shore or any tidal water in the United Kingdom; and power is given to them to summon and require assistance in these cases to prevent plunder, and to use lands adjoining the coast for the purpose of rendering assistance to ships or boats in distress (x).

The act also lays down rules to be observed by persons finding or taking possession of wreck, and for protecting the rights of admirals, vice-admirals, lords of manors and others who are entitled to unclaimed wreck, and for the payment of fees and expenses to the receivers (y).

ledge are required. The assessor must either concur in the report sent to the Board of Trade or signify his reasons for dissenting from it. By s. 435, whenever there is a local marine board in existence, and a stipendiary magistrate is a member of it, the investigation must be before him if present.

(t) Sect. 437 provides for the carrying on in Scotland of investigations of this kind. The power of these tribunals to require any master to deliver up his certificate of competency or service has been already mentioned. See *ante*, pp. 85, 86.

(u) See the M. S. Act, 1854, s. 260, and *ante*, p. 163.

(x) See the M. S. Act, 1854, ss. 441 to 446. Receivers may, by s. 448, examine upon oath any person belonging to ships in distress; and copies of the examinations, which are to be taken down in writing, must be forwarded to the Board of Trade and to Lloyd's. These examinations, and certified copies of them, are *prima facie* evidence of the matters contained in them. See s. 449.

(y) M. S. Act, 1854, ss. 441—457.

By sect. 450, no person who has found or taken possession of wreck, and who (if the owner) does not as soon as possible give notice to the receiver of the district according to the provisions of the act, or who (if not the owner) does not as soon as possible deliver the wreck to the receiver, can make any claim to salvage (z).

By sect. 471, if no owner establishes a claim to wreck found in the United Kingdom before a year from the date at which it has come into the receiver's possession, he must deliver it up to any admiral, vice-admiral, lord of the manor or other person who may satisfy him that he is entitled to it, upon payment of expenses, fees, and salvage. By sect. 472, disputes with respect to the title to wreck may, in these cases, be determined by two justices in the same way as salvage disputes (a).

Unclaimed wreck in the United Kingdom.

By sect. 52 of the Merchant Shipping Act Amendment Act, 1862, the delivery of wreck, or of the proceeds of wreck, by the receiver to any one in pursuance of the provisions of the Merchant Shipping Act, 1854, discharges him from all liability in respect of it, but does not prejudice or affect any question of right or title to the wreck which may be raised by third parties, or any question concerning the title to the soil on which the wreck may have been found.

By sect. 474 of the Merchant Shipping Act, 1854, the Board of Trade may, with the consent of the Treasury, buy any rights of wreck other than those belonging to the Crown (b).

By sect. 475 of the last-mentioned act, if no owner establishes a claim to wreck within the year, and no other person is proved to be entitled to it, the receiver must sell it, and after paying fees, expenses, and salvage, must pay the balance into the Exchequer (c).

It is provided by sect. 19 of the Merchant Shipping Act Wreck in the case of foreign ships.

(z) See as to the sale by a receiver of goods of a perishable nature or small value, s. 453.

(a) If either party is unwilling to refer to two justices, or dissatisfied with their decision, proceedings may be taken within three months from the expiration of the year, in any Court of Law, Equity, or Admiralty having jurisdiction. See s. 473.

(b) For the purpose of facilitating these purchases, this section provides,

that the provisions of the Lands Clauses Consolidation Act, 1845, and of the corresponding statute of the same year for Scotland, shall be deemed to be incorporated with the Merchant Shipping Act, 1854.

(c) By s. 53 of the M. S. A. Amendment Act, 1862, the above-mentioned provisions have been amended so as to protect the rights of the Crown, and the Duchy of Lancaster and Duchy of Cornwall rights with reference to wreck.

Amendment Act, 1855 (18 & 19 Vict. c. 91), that whenever any articles belonging to or forming part of any foreign ship wrecked on the coasts of the United Kingdom, or her cargo, are found on or near these coasts, or brought into port, the consul-general of the country to which the ship or the owners of the cargo belonged (or any consular officer of that country duly authorized) is, in the absence of the owners, or their agent or master, to be deemed the agent of the owners so far as relates to the custody or disposal of the articles so found.

**Customs duties
on wreck.**

All wreck, being foreign goods brought or coming into the United Kingdom or the Isle of Man, is subject to the same duties as if it was imported; and if any question arises as to the origin of the goods, they are to be deemed to be the produce of such country as the Commissioners of Customs may upon investigation determine (*e*).

The Commissioners of Customs and Excise are bound to permit all goods saved from any ship stranded or wrecked on its homeward voyage, to be forwarded to the port of her original destination, and all goods saved from any ship stranded or wrecked on her outward voyage to be returned to the port at which they were shipped (*f*).

We have already seen that timber found floating at sea without an apparent owner, having drifted from the place where it was moored in a river, is not "wreck" within the meaning of the Merchant Shipping Act, 1854 (*g*).

**Offences in
respect of
wreck.**

Provision is also made by the Merchant Shipping Act, 1854, for the punishment of offences in respect of wreck, and for enabling the owners of any ships, boats, or cargoes plundered, damaged, or destroyed, by persons riotously and tumultuously assembled, to recover compensation from the hundred or district in which the offence was committed (*h*);

Any persons who wrongfully carry away any part of a ship or boat stranded, or in danger of being stranded, or in

(*e*) M. S. Act, 1854, s. 499. See *Barry v. Arnaud*, 10 A. & E. 646 (which was a decision upon the 3 & 4 Will. 4, c. 52), as to what is "wreck" within the meaning of this section.

(*f*) M. S. Act, 1854, s. 500. The

commissioners must take security in these cases for the due protection of the revenue. *Ib.*

(*g*) See *Palmer v. Rouse*, 3 H. & N. 505, and *ante*, p. 482, note (*e*).

(*h*) M. S. Act, 1854, ss. 477 to 479.

distress, on or near the shore of any sea or tidal water, or any part of the cargo or apparel, or any wreck, or, Endeavour in any way to impede or hinder the saving of the ship, boat, cargo, apparel, or wreck, or who

Secrete any wreck, or obliterate or deface any marks on it, are liable, in addition to any other punishment to which they may be subject, to a penalty not exceeding 50*l.* (i).

Any person who takes into a foreign port or place and there sells any ship or boat so stranded, derelict, or in distress, or any part of the cargo, or anything belonging to her, or any wreck, is guilty of felony, and subject to penal servitude for a term not exceeding four years (k).

By the general act relating to malicious injuries to property (24 & 25 Vict. c. 97), sect. 49, the unlawfully and maliciously destroying any part of a ship which is in distress, or wrecked, stranded, or cast on shore, or any goods belonging to her, is made a felony, punishable by penal servitude or imprisonment. And by the Larceny Act (24 & 25 Vict. c. 96), sect. 64, stealing any part of any ship in distress, wrecked, stranded or cast on shore, or any goods or articles belonging to her, is made a felony, punishable by penal servitude or imprisonment. By sect. 65 of this act, persons in possession of shipwrecked goods, and not satisfying a magistrate that they have come lawfully by them, may be punished; and by sect. 66, if any one offers for sale any shipwrecked goods which have been, or may be reasonably suspected to have been, unlawfully taken from any shipwrecked or distressed ship, the sale may be stopped, and the offender may, on conviction of the unlawful possession, be punished.

In sects. 480 to 482 of the Merchant Shipping Act, 1854, provisions are contained respecting persons dealing in anchors, cables, sails and other marine stores. The regulations of the statute in this respect are very minute, and do not fall within the scope of this work (l).

Dealers in marine stores and manufacturers of anchors.

(i) M. S. Act, 1854, s. 478. The master may prevent by force any person from attempting to board the ship unless he is a receiver or person authorized by the act to take the command of ships in distress, or a person acting under orders from such a receiver or person. A

penalty of 50*l.* is incurred if any unauthorized person attempts to board a ship under these circumstances.

(k) *Ib.* s. 479.

(l) See the statute in the Appendix, *post*, p. cxliv.

By sect. 483 of the last-mentioned act, all manufacturers of anchors are bound to mark in legible characters on the crown and also on the shank and under the stock their name or initials, with the addition of a progressive number and the weight of the anchors. A penalty not exceeding 5*l.* is incurred for each offence against this provision.

Wreck within
Cinque Ports.

The mode of proceeding with respect to wreck and derelict goods found within the jurisdiction of the Cinque Ports was formerly regulated by the statutes 1 & 2 Geo. 4, c. 76, and the 9 & 10 Vict. c. 99. The latter act is now wholly repealed, and the sections of the former act relating to this subject are also now repealed, so that the procedure with respect to wreck within the jurisdiction of the Cinque Ports is now the same as elsewhere (*m*).

(*m*) See the Merchant Shipping Repeal Act, 1854, and *ante*, p. 502, note (*e*).

CHAPTER XI.

PASSENGERS.

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PASSENGERS on board a ship are entitled, independently of any statutory provision or special contract, to protection, and to kind and considerate treatment on the part of the master. They are bound, on the other hand, to conform, in all respects, to the regulations and discipline of the vessel on which they

GENERAL
RIGHTS AND
DUTIES OF
PASSENGERS.

have embarked (*a*). They must give their assistance, if it becomes necessary and is required by the master, in cases of sea perils and attacks by enemies (*b*). They are not entitled to claim salvage for services so rendered, unless they do more than they are bound to do; as, for instance, by assisting in the navigation of a vessel after the master and some of the crew have left her in peril (*c*), or by rescuing the ship after capture by an enemy (*d*).

In an early case, where the passengers cast the merchandize overboard in a storm, under circumstances which made the sacrifice necessary for the preservation of their lives, it was held that they were not liable to the owners of the goods (*e*).

Rights with
reference to
passage money.

The rights of passengers with respect to passage money depend upon the principles which regulate ordinary contracts. Where a passenger is induced to enter into the contract by representations which are fraudulent, that is to say false within the knowledge of the party making them, the contract is void; even although the misrepresentations are not embodied in the contract (*f*). Where the representations are not fraudulent, but only untrue in point of fact, their untruth forms an excuse for the non-performance of the agreement on the part of the passenger, provided they relate to a matter which is of the essence of the contract. Whether any particular representation is essential depends upon the intention of the parties as apparent from the contract, and the surrounding circumstances. Thus, where statements were made to a passenger by the shipowner that the ship would sail on a particular day, but she did not do so, and consequently the passenger refused to go, the jury were directed that if the day fixed was not understood to be essential, and the ship sailed within a reasonable time, the shipowner was entitled to recover one-half of the passage money, this being shown to be the usage of the trade (*g*). Where, however,

(*a*) See the observations on this subject in Dana's Seaman's Manual, chap. 3.

(*b*) *Boyce v. Bayliffe*, 1 Camp. 58; and the judgment of Lord Alvanley in *Newman v. Walters*, 3 B. & P. 615.

(*c*) *Newman v. Walters*, *ubi supra*.

(*d*) See *The Two Friends*, 1 Rob. 271, and *ante*, p. 485. On a capture the passengers' luggage passes to the captors as well as the cargo. See the judgment

of Lord Ellenborough in *Mulloy v. Barker*, 5 East, 322.

(*e*) *Mouse's Case*, 12 Rep. 63. No question of general average appears to have been raised in this case.

(*f*) See in illustration of these principles *Moens v. Heyworth*, 10 M. & W. 147; *Wontner v. Shairp*, 4 C. B. 404, note (*i*).

(*g*) *Yates v. Duff*, 5 C. & P. 369, and the cases cited above. A common form

emigration agents, who were the owners of ships sailing to Australia, sent a circular to the plaintiff who was about to engage a passage, stating in it that ships belonging to them would be despatched on appointed days (wind and weather permitting), for which written guarantees would be given, and in this list a particular ship was appointed to sail from London on the 15th of August, and from Plymouth on the 25th, and the plaintiff engaged a passage in her and paid a deposit, but no guarantee other than this letter was given, it was held that the statement in the circular amounted to a warranty and that the plaintiff was justified, the ship not having arrived at Plymouth until the 3rd of September, in taking a passage in another vessel, and that he was entitled to recover the deposit and the expenses he had been put to by the delay at Portsmouth (*h*).

Where the ship is lost after the commencement of the voyage, the passage money if paid cannot be recovered back; but it is otherwise if the loss occur before the commencement of the voyage in respect of which it is paid (*i*). The statutory right of passengers to recover the passage money when they are improperly left behind is mentioned in a later part of this Chapter (*j*).

Where the master of a ship had contracted to bring home in it passengers from India, and had laid in stores for the homeward voyage, and he died before the commencement of it, it was held, at *Nisi Prius*, that his representatives were entitled to recover from the chief mate, upon whom the command had devolved, the sums received by him from the passengers for passage money and subsistence, there being no usage to the contrary (*k*).

The rights of passengers by sea with reference to their luggage are usually made the subject of express contract. Where this is not so, the law relating to the luggage of passengers by ships does not differ from that relating to the luggage of passengers travelling by land. The master of a ship has no lien

Rights with reference to luggage.

of fraud has been the advertising of passenger ships by their ordinary instead of their register tonnage; the latter being, in some extreme cases, only one-half of the former. Sect. 70 of the M. S. Act, 1854, imposes penalties on any persons, who, by false representation as to the size of the ship, or otherwise by

any false pretence or fraud, induce any one to engage a passage in any ship.

(*h*) *Cranston v. Marshall*, 5 Exch. 395.

(*i*) *Gillan v. Simpin*, 4 Camp. 241.

(*j*) *Post*, p. 529.

(*k*) *Stordet v. Brodie*, 3 Camp. 253.

on the passenger himself, or on the clothes which he is actually wearing for the passage money; but he has a lien on the luggage of a passenger in this respect (*l*). Where a passenger took a passage in a ship on the terms that the ship was not to be accountable for luggage unless bills of lading had been signed for it; and that each first and second class adult passenger would be allowed twenty cubic feet of luggage free, but that no merchandize would be carried as luggage, and the passenger's luggage was received on board without any question being asked about it, no bill of lading being given or demanded, and was afterwards lost, it was held that the owners were not liable for the loss, although it was caused by the ship being wrecked owing to the negligence of the captain (*m*).

**Rights as
against master.**

Subject to the general rules already mentioned, the duties of the master towards the passengers vary with the contract in each particular case. In an action against a master for a breach of contract in not furnishing good and fresh provisions to a passenger, it was ruled that the jury must be satisfied that a real grievance was sustained, and that they ought not to give damages for every trifling inconvenience (*n*).

The master has, it would seem, a right to exclude a passenger from the table at which the other passengers mess for conduct unbecoming a gentleman; a threat of violence towards himself would certainly justify him in so doing (*o*).

**Common law
and Admiralty
remedies.**

The ordinary remedy of a passenger for any breach of contract or misconduct on the part of the master or owners, is an action at law (*p*). The Court of Admiralty has also jurisdiction to entertain questions of personal damage to passengers (*q*).

**STATUTORY
PROVISIONS
RELATING TO
PASSENGERS.**

Numerous acts of Parliament have been, from time to time, passed for the protection of passengers in merchant vessels, and for the encouragement of emigration (*r*).

(*l*) *Wolf v. Summers*, 2 Camp. 631.

(*m*) *Wilton v. The Atlantic Royal Mail Steam Navigation Company*, 10 C. B., N. S. 453.

(*n*) *Young v. Fewson*, 8 C. & P. 463.

(*o*) *Prendergast v. Compton*, 8 C. & P. 454, and see *ante*, p. 93.

(*p*) Where eight passengers in the same ship brought separate actions

against the owner for breach of contract, the Court refused to stay seven of them upon an undertaking that they should abide the event of one; *Westbrook v. The Australian Royal Mail Steam Navigation Company*, 14 C. B. 113.

(*q*) *The Ruckers*, 4 Rob. 73.

(*r*) The first separate act for regu-

The provisions of the Merchant Shipping Act, 1854, and of the Merchant Shipping Act Amendment Act, 1862, limiting the liability of shipowners in cases of loss of life or personal injury, have been mentioned in an earlier Chapter(s). It is provided by sect. 56 of the latter of these acts, that in any proceeding against any shipowner under the earlier act for loss of life, the master's list or the duplicate list of passengers required to be delivered to the officers of Customs (under the Passengers Act, 1855), is, in the absence of proof to the contrary, to be sufficient proof that the persons in respect of whose death the proceedings are instituted were passengers on board the ship at the time of their death.

The statutes now in force with reference to the carrying of boats by sea-going ships generally, to the equipment of steam ships, to the survey of passenger steamers, and to the conveyance of passengers in steamers and passenger ships, are the Merchant Shipping Act, 1854 (Part IV.), the Passengers Act, 1855 (the 18 & 19 Vict. c. 119), the Merchant Shipping Act Amendment Act, 1862 (the 25 & 26 Vict. c. 63), and the Passengers Act Amendment Act, 1863 (26 & 27 Vict. c. 51).

It is provided by sect. 292 of the Merchant Shipping Act, 1854, that no decked ship (except ships used only as steam tugs, and ships engaged in the whale fishery) shall proceed to sea from the United Kingdom, unless she is provided with boats duly supplied with all requisites for use, according to a scale fixed by the act, and varying with the tonnage of the ship (*t*).

UNDER THE
MERCHANT
SHIPPING
ACT, 1854,
AND THE MERCHANT SHIP-
PING ACT
AMENDMENT
ACT, 1862.

By the same section, in ships which carry more than ten passengers, one of these boats must be fitted as a life-boat, or a life-boat must be carried in addition. Two life-buoys must also be carried and kept ready for immediate use (*u*).

Rules as to
life buoys and
boats.

lating passenger ships was the 43 Geo. 3, c. 56 (1803). See also the 5 & 6 Vict. c. 107; the 8 & 9 Vict. c. 14; the 9 & 10 Vict. c. 100; the 10 & 11 Vict. c. 103; the 11 & 12 Vict. c. 6, s. 81; the 12 & 13 Vict. c. 33; the 14 Vict. c. 1; the 14 & 15 Vict. c. 79 (the Steam Navigation Act, 1851), and the 15 & 16 Vict. c. 44 (the Passengers Act, 1852), all now repealed except as to proceedings begun and liabilities created under the latter of these acts. See the Merchant Shipping Repeal Act, 1854, and

the Passengers Act, 1855.

(*s*) See *ante*, pp. 51, 52, the M. S. Act, 1854, s. 506, and the M. S. A. Amendment Act, 1862, s. 54.

(*t*) See the Scale, *post*, Appendix, p. clxiii. These provisions apply to all British ships and all foreign steam ships carrying passengers between places in the United Kingdom. M. S. Act, 1854, s. 291.

(*u*) The M. S. Act, 1854, provided that these enactments should not be applicable in any case in which a cer-

By sects. 293 and 294, penalties are imposed upon the owner or master if these provisions are not complied with, or if through their wilful default or neglect the boats or buoys are lost or damaged, or not replaced on the first opportunity if accidentally lost or injured in the course of the voyage; and no ship can obtain a clearance or transire unless provided with the required boats and buoys.

By sect. 300 of the Merchant Shipping Act, 1854, certain rules were laid down with regard to the build of steam ships. This section was, however, repealed by the Merchant Shipping Act Amendment Act, 1862 (*v*), which contains no new provisions on this subject.

Rules as to
equipment of
steam ships.

Sect. 301 of the Merchant Shipping Act, 1854, contains provisions for the outfit of steam ships, of which the following is an outline:—

- (1.) All steam ships requiring a survey under the provisions of the act must be provided with a safety valve on each boiler, constructed according to the plan detailed in the act (*x*).
- (2.) All sea-going steam ships employed to carry passengers must have their compasses properly adjusted from time to time.
- (3.) All sea-going steam ships (unless used solely as tugs), must be provided with a fire hose capable of being connected with the engines.
- (4.) All sea-going steam ships employed to carry passengers must be provided with proper distress signals, according to rules laid down in the statute.
- (5.) All home-trade steam ships employed to carry passengers by sea must be provided with such shelter for the protection of deck passengers as the Board of Trade may require.

By the same section a penalty not exceeding 100*l.* is imposed upon the owner of every ship that plies or goes to sea without

tificate had been obtained under the tenth section of the Passengers Act, 1852. This act is now repealed; but the Passengers Act, 1855 (the 18 & 19 Vict. c. 119) contains, in sect. 27, special provisions with reference to the boats to be carried by passenger ships.

See *post*, p. 536.

(*v*) M. S. A. Amendment Act, 1862, s. 2, and Schedule, Table (A.)

(*x*) By s. 302 of this act, heavy penalties are imposed upon persons who place improper weights on the safety valves.

being provided as mentioned above, if the owner appears to have been in fault. The master, if in fault, is liable to a penalty not exceeding 50*l*.

The following are the regulations laid down by the Merchant Shipping Act, 1854, with reference to the survey of passenger steamers:—

By sect. 304, all passenger steamers (*y*) must be surveyed twice at least in the year.

The Board of Trade has (by sects. 305 to 308) power to appoint shipwright surveyors and engineer surveyors, for the purpose of carrying out the surveys required by the act. These surveyors are entitled to go on board steam ships at all reasonable times, for the purpose of inspection, and must execute their duties under the direction of the Board of Trade (*z*).

By sect. 309, the owners of every passenger steamer must cause her to be surveyed by a shipwright surveyor and an engineer surveyor, and obtain declarations from them giving full particulars, according to the provisions of the act, as to the condition of the ship, and her machinery, appurtenances, and equipments, the time for which, and the local limits (if any) within which they appear to be sufficient, and the number of passengers which the ship appears fit to carry (*a*).

We have already seen that the Merchant Shipping Act Amendment Act, 1862, renders it necessary that all steam ships which are required by the Merchant Shipping Act, 1854, to have on board a master possessing a Board of Trade certificate, should also carry a certificated engineer or engineers (*b*).

(*y*) For the purpose of these enactments, the word "passengers" includes any persons carried in a steam ship other than the master or crew, or the owner and his family and servants; and the term "passenger steamer" comprehends all British steam ships carrying passengers to, from, or between any places in the United Kingdom, not being steam ferry-boats working in chains. See s. 303.

(*z*) By s. 321 of the act, these surveyors must, if required to do so, make returns from time to time to the Board as to the build, burthen, rate of sailing, machinery and equipments of the ships surveyed by them, and the owners, masters and engineers of the ships are bound to give them information and

assistance in these respects.

(*a*) See *post*, Appendix, p. cvii, where the details of these declarations will be found. By the M. S. Act, 1854, s. 311, the half-yearly surveys must have been made, if possible, in the months of April and October. By s. 34 of the M. S. A. Amendment Act, 1862, this is no longer necessary; but it is provided by that section that no declaration is to be given by any surveyor under Part IV. of the M. S. Act, 1854, for a period exceeding six months, and that no certificate issued by the Board of Trade is to remain in force more than six months from its date.

(*b*) *Ante*, pp. 118—120, and the M. S. A. Amendment Act, 1862, ss. 5—11.

It is also provided by sect. 12 of the Merchant Shipping Act Amendment Act, 1862, that the declarations required to be given by engineer surveyors under sect. 309 of the Merchant Shipping Act, 1854, which is above mentioned, shall in the case of ships bound to carry certificated engineers contain a statement, that the engineers' certificates are in the condition required by the act.

Certificates.

These declarations must (by sect. 310 of the Merchant Shipping Act, 1854) be transmitted by the owners to the Board of Trade within fourteen days of their receipt, and (by sect. 312) the Board may thereupon issue duplicate certificates stating that these provisions of the act have been duly complied with, and repeating the statements contained in the surveyor's declaration as to the local limits beyond which the ships are not fit to ply, and as to the number of passengers which they are fit to carry.

By sect. 313, the duplicate certificate must be transmitted by the Board to a public officer at a port mentioned for that purpose by the owner, or at the port of survey, or at that at which the owner or his agent resides, from whom the owner, master or agent may upon application obtain the same on payment of the proper fees (c).

By sect. 315, these certificates cease to be in force on the date fixed by the Board for their expiration, or upon notice given by the Board to the owner, agent or master, that they are cancelled or revoked (d). When a certificate expires, however, during the absence of a passenger steamer from the United Kingdom, no penalty is incurred for want of it until the ship first begins to ply with passengers after her next subsequent return.

By sect. 318 of the statute, no steamer of this description may clear out or proceed to sea, or on any voyage or excursion with passengers on board, unless these provisions have been in all respects complied with. A copy of the certificate must (by sect.

(c) See, as to these fees, Table (T.) in the Schedule of the act, *post*, Appendix, p. clxiv.

(d) The Board may revoke or cancel any certificate whenever it has reason to believe that the declarations have been fraudulently or erroneously made,

or issued on false or erroneous information, or that, since they were made, the ship, machinery, or equipments have sustained any injury, or are otherwise insufficient. In these cases a new survey may be insisted on by the Board. See M. S. Act, 1854, s. 316.

317) be put up and kept up, as long as it remains in force, in some conspicuous part of the vessel.

Heavy penalties are incurred under these sections of the act, and sections 319 and 320, if more passengers are received on board than the number allowed by the certificate, if these regulations are in any other respect infringed, or if any forgery or fraud is committed with respect to the declarations and certificates.

By sect. 325 of the Merchant Shipping Act, 1854, the master of any home trade passenger ship may refuse to receive on board any person who by drunkenness or otherwise is in such a state, or so misconducts himself, as to cause annoyance to the other passengers. If such a person is on board he may be landed at any convenient place; and in all these cases the persons offending forfeit any fare which they may have paid (*e*).

Misconduct by persons on board home trade passenger ships.

By the Merchant Shipping Act, 1854, sects. 322 and 323, rules were laid down to prevent misconduct by passengers and the overcrowding of steamers and the evading of fares. These sections were, however, repealed by the Merchant Shipping Act Amendment Act, 1862 (*f*), which has substituted the following provisions for the enactments of the earlier act.

By sect. 35 of the Merchant Shipping Act Amendment Act, 1862, penalties are imposed on—

- (1.) Any person who, being drunken or disorderly, has been on that account refused admission into any duly surveyed passenger steamer by the owner or any person in his employment, and who, after having had the amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the steamer;
- (2.) Any person who, being drunken or disorderly, on board any such steamer is requested by the owner or any person in his employment to leave it at any place in the United Kingdom at which he can conveniently do so,

Misconduct by passengers in steamers.

(*e*) The act also contains a general provision imposing a penalty not exceeding 20*l.*, or imprisonment with or without hard labour, for any period not exceeding four weeks, on any person who secretes himself and goes to sea in

any ship without the consent of the owner, consignee, master, mate, or person in charge or entitled to give such consent. See s. 258.

(*f*) The M. S. A. Amendment Act, 1862, s. 2, and Schedule.

and who, having had the amount of his fare (if he has paid it) returned or tendered to him, refuses to comply with such request;

- (3.) Any person on board any such steamer who, after warning by the master or any other officer, molests or continues to molest any passenger;
- (4.) Any person who, after having been refused admission into any such steamer by the owner or any person in his employment on account of the steamer being full, and who after having had the full amount of his fare (if he has paid it) returned or tendered to him, nevertheless persists in attempting to enter the ship;
- (5.) Any person, having got on board any such steamer, who, upon being requested on the like account by the owner or any person in his employment to leave the steamer before it has quitted the place at which he got on board, and who, upon having the full amount of his fare (if he has paid it) returned or tendered to him, refuses to comply with the request;
- (6.) Any person who travels or attempts to travel in any such steamer without having previously paid his fare, and with intent to avoid payment of it;
- (7.) Any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond this distance without previously paying the additional fare, and with intent to avoid payment of it;
- (8.) Any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit the steamer; and
- (9.) Any person on board any such steamer who does not when required by the master or other officer either pay his fare, or exhibit the ticket or other receipt (if any), showing the payment of the fare which is usually given to persons travelling by and paying their fare for the steamer (g).

By sect. 36 of the same act it is provided, that any person on board any such steamer who wilfully does or causes to be

(g) The recovery of the fare is not to be prejudiced by the imposition of any penalty under this section. M. S. A. Amendment Act, 1862, s. 35.

done anything in such a manner as to obstruct or injure any part of the machinery or tackle of the steamer, or to obstruct, impede, or molest any of the crew in the navigation or management of the steamer, or otherwise in the execution of their duty, shall be liable to a penalty not exceeding 20*l*.

And by sect. 37, the master or other officer of any duly surveyed passenger steamer, and all persons called by him to his assistance, may detain any person who has committed any offence against any of these provisions, and whose name and address are unknown to the officer, and convey him with all convenient despatch before a justice without warrant (*h*).

We have already seen (*i*), that sect. 326 of the Merchant Shipping Act, 1854, requires reports of all serious accidents to be forwarded to the Board by the owners, or by the masters of the vessels. Report of accidents.

This statute also requires (by sect. 327) that notice should be given to the Board by the owner in all cases in which it is apprehended that any steam ship has been wholly lost.

With the view of preventing the occurrence of accidents, it is also provided by sect. 329 of the Merchant Shipping Act, 1854, that no person shall be entitled to carry, or to require the master or owner to carry, in any ship any aqua fortis, oil of vitriol, gunpowder, or any goods which in the judgment of the master or owner are of a dangerous nature. The master or owner may refuse to take on board any parcel that he suspects to contain dangerous goods, and may require it to be opened; and any person who sends or carries by any ship goods of a dangerous nature, without distinctly marking their nature on the outside of the package, or giving notice in writing of it to the master or owner before the goods are carried or sent, is liable to a penalty not exceeding 100*l*. By sect. 38 of the Merchant Shipping Act Amendment Act, 1862, these provisions are extended to foreign ships when within the limits of the United Kingdom. Carrying dangerous goods.

The passenger acts now in force are the Passengers Act, 1855 (the 18 & 19 Vict. c. 119) and the Passengers Act Amendment Act, 1863 (the 26 & 27 Vict. c. 51). The first of these acts con-

(*h*) The magistrate is empowered to try and dispose of the case with all convenient despatch. *Ib.*
 (*i*) *Ante*, p. 101.

solidated many of the provisions of the law on this subject, and came into operation on the 1st October, 1855; and the second of these acts, which amended the first and is to be construed with it, came into operation on the 1st October, 1863 (*k*).

The application of these acts is as follows:—

UNDER THE
PASSENGERS
ACT, 1855 (18
& 19 VICT. C.
119), AND THE
PASSENGERS
ACT AMEND-
MENT ACT,
1863 (26 & 27
VICT. C. 51).

The general provisions of the earlier act applied to all passengers except cabin passengers, and labourers under indenture to the Hudson's Bay Company carried in the company's ships. This act provided that no persons should be deemed to be cabin passengers unless the space allotted to their exclusive use was in the proportion of at least thirty-six clear square feet to each passenger of the age of twelve or upwards, nor unless they were messed throughout the voyage at the same table with the master or first officer of the ship, nor unless the fare contracted to be paid by each was in the proportion of at least 30*s.* for every week of the length of the voyage as computed for sailing vessels proceeding south of the equator under the provisions of the act, and of 20*s.* for vessels proceeding north of the equator, nor unless they were duly furnished with contract tickets according to the provisions of the act (*l*).

The main provisions of the 18 & 19 Vict. c. 119, are still inapplicable to cabin passengers, but we shall see that a few of them have been extended to passengers of this class by the 26 & 27 Vict. c. 51 (*m*).

The general provisions of these acts apply to all "passenger ships," that is to say, to every description of sea-going vessel, whether British, foreign or colonial, carrying on any voyage from the United Kingdom to any place out of Europe, and not in the Mediterranean, more than fifty passengers (other than cabin passengers) or a greater number of passengers (other than cabin passengers), when the ship is propelled by sails, than in the

(*k*) See these acts, *post*, Appendix. The first of them repealed, from the date of its coming into operation, the Passengers Act then in force, (the 15 & 16 Vict. c. 44).

(*l*) 18 & 19 Vict. c. 119, s. 3. Before the passing of the earlier Passengers Act, (the 15 & 16 Vict. c. 44,) there was no statutory definition of a *cabin passenger*, and doubts had been entertained as to the precise meaning of the term. The object of the description mentioned above was to exclude from

the term *cabin passengers*, and to include clearly within the protection of the act, a class of passengers frequently carried in steam vessels, and called *intermediate passengers*. These are, in fact, steerage passengers who are berthed in cabins, or in enclosed berths screened off by canvas, or wooden bulkheads. See the proceedings of the Committee of the House of Commons on the Passengers Act, 1851.

(*m*) See ss. 5, 6, 11, and 15, of the 26 & 27 Vict. c. 51.

proportion of one statute adult (that is, one person of the age of twelve or upwards, or two persons between the ages of one and twelve) to every thirty-three tons of the registered tonnage, or, when the ship is propelled by steam, a greater number than in the proportion of one statute adult to every twenty tons register tonnage(*n*). These acts do not, however, extend to Queen's ships of war, or to ships in the service of the Admiralty(*o*). Some of the provisions of these acts extend to ships carrying passengers, although they are not "passenger ships" within the above description(*p*), and others, which will be mentioned shortly, relate to ships carrying passengers on particular colonial voyages which are mentioned in the first of these acts(*q*), and to vessels bringing passengers *into* the United Kingdom from places out of Europe(*r*).

It was held that a sailing ship was not a passenger ship within the meaning of the 18 & 19 Vict. c. 119, because she carried more than the number of passengers mentioned in that act, if that number or proportion could not be made up without reckoning cabin passengers, even although those persons had not received contract tickets; for the provisions of that act with reference to contract tickets are only applicable in the case of passenger ships, and the non-delivery of the tickets on board a ship that is not a passenger ship does not render it necessary to count the cabin passengers as steerage passengers(*s*).

The Colonial Land and Emigration Commissioners are empowered to carry these acts into execution(*t*). Their more important provisions are as follows:—

The following are the rules laid down by the Passengers

(*n*) The definition of a passenger ship which is given above, is that contained in s. 3 of the 26 & 27 Vict. c. 51, which repeals the definition given by s. 3 of the 18 & 19 Vict. c. 119.

(*o*) 18 & 19 Vict. c. 119, ss. 3 & 4, and 26 & 27 Vict. c. 51, s. 4. Ships of war and transports in the service of the East India Company, and steamers carrying mails under contract of the government of the state or colony to which the vessels belong, were also exempted from the operation of the earlier act by s. 4 of the first of these acts. The former class of vessels has ceased now to exist, and the exemption of steamers carrying mails has been repealed by

s. 4 of the 26 & 27 Vict. c. 51.

(*p*) See the 18 & 19 Vict. c. 119, ss. 10, 13, 16, 17, 48, 49, 56, 66, 100, 101, and 102.

(*q*) See the 18 & 19 Vict. c. 119, ss. 95—99.

(*r*) *Ib.* ss. 100, 101, 102.

(*s*) *Ellis v. Pearce*, 1 E. B. & E. 431.

(*t*) 18 & 19 Vict. c. 119, ss. 6—9. Memoranda were issued in March, 1856, and in April, 1864, by the commissioners, containing instructions for the guidance of their officers in carrying into effect the provisions of these acts.

Act, 1855 (18 & 19 Vict. c. 119), as modified by the Passengers Act Amendment Act, 1863 (26 & 27 Vict. c. 51) for determining the number of passengers that may be carried in any passenger ship.

Number of
passengers that
may be carried.

By sect. 14 of the 18 & 19 Vict. c. 119, no ship may carry under the poop, or in the round-house, or deck-house, or on the upper passenger deck (*u*), a greater number of passengers than in the proportion of one statute adult to every fifteen clear superficial feet of deck allotted to their use. No ship may carry on her lower passenger deck (*x*) a greater number of passengers than in the proportion of one statute adult to every eighteen clear superficial feet of deck allotted to their use: and if the height between the lower passenger deck and the deck immediately above it is less than seven feet, or if the apertures (exclusive of side scuttles) through which light and air are admitted together to the lower passenger deck are less in size than in the proportion of three square feet to every one hundred superficial feet of the lower passenger deck, no greater number of passengers may be carried on this deck than in the proportion of one statute adult to every twenty-five clear superficial feet of it. No ship, whatever be her tonnage or superficial space of passengers' decks, may carry a greater number of passengers on the whole than in the proportion of one statute adult to every five superficial feet, clear for exercise, on the upper deck or poop, or (if secured and fitted on the top with a railing or guard to the satisfaction of the emigration officer at the port of clearance) on any round-house or deck-house (*y*).

(*u*) This term means "the deck immediately beneath the upper deck, or the poop, or round-house, and deck-house, when the number of passengers and cabin passengers carried in the poop, round-house, or deck-house exceeds one-third of the total number of passengers which such ship can lawfully carry on the deck next below." See the 18 & 19 Vict. c. 119, s. 3.

(*x*) This term is defined, by s. 3 of the 18 & 19 Vict. c. 119, to mean the deck next beneath the upper passenger deck, not being an orlop deck.

(*y*) 18 & 19 Vict. c. 119, s. 14. It was also provided by this section that no ship propelled by sails should carry more persons (including every individual on

board) than in the proportion of one statute adult to every two tons of the tonnage; but this rule was repealed by s. 5 of the 26 & 27 Vict. c. 51, except so far as relates to penalties incurred or legal proceedings taken under it. In measuring the passenger-decks, round-house, or deck-house, the space for the hospital and that occupied by the personal luggage of the passengers is to be included. See the 18 & 19 Vict. c. 119, s. 14. These provisions with reference to the space to be allotted to passengers may, in the case of ships carrying natives of Asia and Africa from an English colony, and intended to pass within the tropics, be modified by proclamation of the colonial government. See the 16 &

These provisions are made applicable, by sect. 101 of the 18 & 19 Vict. c. 119, to ships bringing passengers into the United Kingdom from places out of Europe (*z*).

By sect. 13 of this act, no ship may carry passengers or cabin passengers on more than two decks (*a*).

By sects. 16 and 17 of the 18 & 19 Vict. c. 119, the master of every ship carrying passengers on any voyage to which these acts extend must, before clearance, sign two lists in a form prescribed by the acts, stating, amongst other things, the name and tonnage of the ship, and giving the names and descriptions of the passengers, with the amount of space allowed to them. Additional lists must be signed if additional passengers are taken on board. These lists must be countersigned by an emigration officer, and delivered by the master to the officer of customs from whom a clearance is demanded; or, in the case of additional lists, to the officer of customs at the place at which the additional passengers are taken on board, or at the next port at which the ship may touch where there is an officer of customs. One of the lists, called "the master's list," must be countersigned by the officer of customs, and returned to the master, who is bound to keep it, and to produce it to the British local authorities at any port at which he may land any passenger; and, finally, it must be deposited with the chief officer of customs, or with the consul at the port of discharge (*b*).

Lists of passengers.

17 Vict. c. 84, which is not repealed by the 18 & 19 Vict. c. 119, s. 15. See also the 18 & 19 Vict. c. 104, which regulates the conveyance of emigrants from ports in the Chinese seas.

(*z*) By this section a penalty not exceeding 10*l*., nor less than 5*l*., in respect of every person or statute adult constituting the excess, is imposed upon the master of any ship bringing from a place out of Europe into the United Kingdom a greater number of passengers or persons than is allowed by s. 14. The tonnage check on the number of passengers which was contained in the last-mentioned section has been repealed by the 26 & 27 Vict. c. 51. See the last note.

(*a*) Cabin passengers, however, in a proportion not exceeding one for every 100 tons, or sick persons placed in hospital, may be carried in a poop or deck-house, notwithstanding that passengers are carried on two other decks,

ib. Penalties are imposed by this act upon persons found on board fraudulently attempting to obtain a passage without the knowledge and consent of the owner, charterer or master; see s. 18; and the limit of these penalties is extended by s. 7 of the 26 & 27 Vict. c. 51. By the law of the United States fourteen superficial feet must be allowed for every passenger whose age exceeds one year, if the vessel is not to pass within the tropics. When the height between the decks is less than six feet and more than five, each passenger must be allowed sixteen superficial feet, or if the height is less than five feet, twenty-two superficial feet: for every passenger on the orlop deck there must be allowed thirty feet. See the evidence taken before the Committee of the House of Commons on the Passengers Act, 1851, p. 5.

(*b*) See *post*, Appendix, p. ccxciv, for the form of these lists. Whenever any

By sect. 6 of the 26 & 27 Vict. c. 51, it is further provided, that these lists must contain the names of all the cabin passengers on board, specifying whether they are under or over twelve years of age, and at what place the passengers and cabin passengers are to be landed.

Heavy penalties are imposed by these sections on masters who disregard their provisions.

Survey and inspection of ships.

By sect. 19 of the 18 & 19 Vict. c. 119, no "passenger ship" can clear out or proceed to sea until she has been surveyed under the direction of the government emigration officers, but at the owners or charterers' expense, and reported to be seaworthy and fit in all respects for the intended voyage (c).

By sect. 10 of this act, the masters of all ships carrying or intended for the carriage of passengers on any voyage to which the act extends are bound to afford to the emigration officers within the British dominions every facility for inspecting the ships and communicating with the passengers, and for ascertaining that the act has been complied with. In the case of British ships the same facilities must also be afforded to the British consular authorities abroad.

Bond to Crown.

Before any "passenger ship" can clear out or proceed to sea it is necessary (by sects. 11 and 63 of the 18 & 19 Vict. c. 119) that a bond to the Crown in the sum of 2,000*l.* should be entered into by the master, together with the owner or charterer (or in the absence of the owner or charterer, or if the master is the owner or charterer, together with a surety) to secure obedience to the act, and to all orders and regulations made in order to carry it into execution. This bond must also be conditioned that the ship is in all respects seaworthy, and that all penalties incurred under the act shall be duly paid; and where

additional passenger is taken on board the master must obtain a fresh certificate from the emigration officer that all the requirements of the act have been duly complied with; 18 & 19 Vict. c. 119, s. 17.

(c) The survey is to be made before the cargo is put on board. The owner or charterer, if dissatisfied with the report of the surveyors, may require the emigration officer or chief officer of customs to appoint three other surveyors to survey the ship again at his

expense. If they report unanimously that the ship is seaworthy and fit for the voyage she is to be deemed to be so, 18 & 19 Vict. c. 119, s. 19. See also s. 11, as to the certificate of clearance. If any passenger ship touches at a port in the United Kingdom after having sustained any damage, she must be effectually repaired, and a certificate of seaworthiness and fitness must be obtained before she can sail again. See s. 50.

the ship is a foreign one proceeding to any of the British possessions abroad, a statement must be inserted in the condition that the master will submit himself, as if he were a British subject, to the British tribunals abroad having power to adjudicate on offences committed against the act.

By sect. 17 of the 26 & 27 Vict. c. 51, it is provided, that in the case of passenger ships of which neither the owners nor the charterers reside in the United Kingdom the bond must be for the sum of 5,000*l.*, and must contain an additional condition that the obligors shall be liable to the Crown for all expenses incurred under the Passengers Acts in rescuing, maintaining, or forwarding to their destination passengers who by reason of shipwreck, or any other cause except their own neglect or default, are not conveyed to their intended destination by the owners or charterers (*d*).

In order to facilitate the enforcement of these bonds in the British colonies, in the case of "passenger ships" proceeding to the Queen's possessions abroad, it is provided by sect. 64 of the 18 & 19 Vict. c. 119, that counterparts of them may be certified by the chief officers of customs at the ports of clearance, and sent to the colony, where they are receivable in evidence without further proof of the execution (*e*).

By sect. 11 of the last-mentioned act, no ship fitted or intended for the carriage of passengers as a "passenger ship" can clear out or proceed to sea without a certificate from the emigration officer at the port of clearance that the requirements of the act have been complied with, and that the ship is seaworthy, in safe trim, and in all respects fit for the voyage, and that the passengers and crew are in a fit state to proceed, nor until the master has joined in executing the bond to the Crown (*f*).

(*d*) See as to the form of these bonds, *post*, Appendix, p. ccxcvi. They must be executed in duplicate, and are not liable to stamp duty, see 18 & 19 Vict. c. 119, s. 63. In the absence of any agreement to the contrary, the owner is the person ultimately liable in respect of any default in complying with the regulations of the act. See s. 65.

(*e*) These bonds cannot be sued on in the colony after the expiration of three months from the arrival of the ship there, nor in the United Kingdom

after twelve months from the return of the ship and master; 18 & 19 Vict. c. 119, s. 64.

(*f*) This section gives to the owner or charterer a power of appealing in writing to the emigration commissioners against a refusal to grant this certificate. This stringent provision was introduced for the first time by the 15 & 16 Vict. c. 44. Its object was to put a stop to a practice, of which there had been recent instances, of foreign vessels proceeding to sea without a clearance when

Certificate of
clearance.

By sect. 13 of the 26 & 27 Vict. c. 51, if any passenger ship clears out or proceeds to sea without the master's having first obtained the certificate of clearance, or having joined in this bond, or if any such ship after having put to sea puts into any port or place in the United Kingdom and leaves or attempts to leave it with passengers on board without having obtained the certificate of clearance necessary in such a case, the ship is forfeited to the Crown; and in these cases the ship may be seized by any officer of customs if found within two years from the commission of the offence in any part of the Queen's dominions (*g*).

No action will lie against an emigration officer who in the exercise of a *bona fide* discretion refuses to give a clearance certificate, under the belief that the vessel is so deeply laden as to endanger the ship and passengers, although none of the articles taken on board are prohibited by these statutes (*h*).

Medical inspection and landing of sick passengers.

Another requisite before any "passenger ship" may clear out or proceed to sea is the medical inspection of the passengers and crew, and of the medicines on board. The owner or charterer is bound by sect. 43 of the 18 & 19 Vict. c. 119, to provide an adequate supply of medicines, medical comforts, instruments, and disinfecting fluid or agent for the intended voyage; and by sect. 44, before the clearance the emigration officer must, if it be possible, cause an inspection to be made of these medicines and other matters, and also of all the passengers and crew, by a medical practitioner appointed by him (*i*).

By sect. 45, if the emigration officer is satisfied that any person on board or about to proceed on board is by reason of sickness unfit to proceed, or is for any reason likely to endanger the health or safety of the other persons on board, he may pro-

required to comply with the regulations of the emigration officers. Under the earlier system there was no adequate punishment in these cases, for if a bond had been given by the master, it could only be enforced against him personally, and this remedy was of no effect if the ship was sent back to England with a different master.

(*g*) This section is substituted for s. 12 of the 18 & 19 Vict. c. 119, which is repealed by the 26 & 27 Vict. c. 51, s. 12. See also s. 50 of the 18 & 19 Vict. c. 119, *post*, p. 531. The ship

may be released by an order from any of the secretaries of state, on payment of any sum not exceeding 2,000*l.*, which the secretary of state may specify in writing; 26 & 27 Vict. c. 51, s. 13.

(*h*) *Steel v. Schomberg*, 4 E. & B. 623, which was a decision upon the Passengers Act, 1852.

(*i*) The inspection may be either on board, or at any convenient place on shore appointed by the emigration officer. In London the inspection is carried on in the dock. At Liverpool it is made before embarkation.

hibit the embarkation, or require the person in question to be re-landed. The officer may also, if he deem it necessary, require all or any of the passengers to be re-landed for the purification of the ship or otherwise. The observance of these provisions is enforced by heavy penalties (*k*).

By sect. 46, passengers so re-landed and who are not afterwards re-embarked may recover summarily all the passage money which they have paid from the person to whom it has been paid, or from either the owner, charterer, or master, at their option, or at that of the emigration officer.

By sect. 47, the master is bound, in these cases, to find subsistence money for every statute adult at the rate of 1s. 6d. a day until the passengers are re-embarked, or decline, or neglect to proceed, or their passage money is returned.

By sect. 11 of the 26 & 27 Vict. c. 51, the provisions of sect. 46 of the 18 & 19 Vict. c. 119, are extended to cabin passengers landed on account of sickness, and it is provided that the passage money of all passengers so landed may be recovered in the manner pointed out by the last-mentioned act, upon the delivery up of their contract tickets, and notwithstanding the ship may not have sailed; in the case of cabin passengers, however, only one-half of the passage money is recoverable.

By sect. 48 of the 18 & 19 Vict. c. 119, if any persons on whose behalf a contract has been made for a passage in a ship proceeding on a voyage to which the act extends, are at the place of embarkation before six in the afternoon of the day of embarkation, and, if (being required to do so) they pay the passage money, or the balance, but from any cause other than their own refusal, neglect, or default, or the prohibition of an emigration officer, or the requirements of an order in council, they are not received on board before that hour, or if from any of the causes above mentioned any passengers who have been received on board do not obtain a passage in the ship to the port contracted for, or do not, with their families (if included in the contract), obtain a passage to that port in some equally eligible ship, to sail within ten days from the day of embarkation, being in the mean time paid subsistence money, they are

Rights of passengers when left behind.

(*k*) When any persons are re-landed under these provisions, any members of the family who cannot be properly se-

parated from these persons must also be re-landed; *ib.*

entitled to recover summarily all the passage money which they have paid. They may recover the passage money, either from the person to whom or on whose account it has been paid, or (if the contract has been made with the owner, charterer, or master, or with any one acting for them), from either the owner, charterer, or master, at the option of the passenger or of the emigration officer. They are also entitled in these cases to compensation for the loss and inconvenience incurred (*l*).

By sect. 49 of this act, if any ship, whether "a passenger ship" or not, does not actually put to sea on the voyage before three in the afternoon of the day after the day of embarkation, every passenger may claim subsistence money at the rate of 1s. 6d. a day for every statute adult for the first ten days, and afterwards at the rate of 3s. a day. This provision does not, however, apply for the first two days after the day of embarkation, if the passengers are maintained on board as if the voyage had commenced. Nor does it apply at all if the detention is unavoidable, owing to the state of the weather, or not the result of any act or default of the owner, charterer, or master (*m*).

The Passengers Act, 1855 (the 18 & 19 Vict. c. 119), contains also numerous provisions for promoting the safety, comfort, and health of the passengers during the voyage. Some of these provisions have been modified by the Passengers Act Amendment Act, 1863 (the 26 & 27 Vict. c. 51), and they are shortly as follows:—

Construction of
decks and
space to be
allowed.

By sects. 20 to 23 of the 18 & 19 Vict. c. 119, the decks in every "passenger ship" must be strongly and firmly constructed, in a manner pointed out in the act, and to the satisfaction of the emigration officer at the port of clearance, and there must be a height of six feet between them. The berths must be of specified dimensions, securely constructed, and not overcrowded; the single men must be berthed in a separate compartment of the ship or in separate rooms; no more than one person (unless

(*l*) The language of one of the earlier acts (the 12 & 13 Vict. c. 33, ss. 32 and 33) was ambiguous, and doubts had been entertained as to whether the liability to refund the passage money was not restricted to the party to whom it had been paid, or with whom the contract had been actually made. The

words in the present act were used for the purpose of giving a remedy in the alternative. The ultimate liability is, however, thrown on the owners, unless there be any agreement to the contrary; see s. 65 of the 18 & 19 Vict. c. 119.

(*m*) The emigration officer is to be the judge of this; *ib*.

in the case of married persons, or women and children under twelve) may be placed in the same berth; and no berths which have been occupied may be taken down within forty-eight hours after the arrival of the ship at her port of final discharge, unless all the passengers have voluntarily quitted the ship before that time (n).

By sects. 24 and 25 of this act, in all "passenger ships" a Hospital, &c. sufficient space must be set apart for a hospital (o); and privies, varying in number with the number of the passengers, must be fitted up on each side of the ship.

By sect. 26, no "passenger ship" can clear out or proceed to sea without such provision for affording light and air to the passenger decks as the emigration officer may require. If there are a hundred passengers on board, a proper ventilating apparatus must be carried. The passengers must be allowed to have the free and unimpeded use of the hatchways situated over their portion of the ship, and over each hatchway a booby hatch must be erected, or such other covering as may, in the opinion of the emigration officer, afford the greatest amount of light, air, and protection from wet. Supply of light and air.

By sects. 31, 33, 34 and 35 of the 18 & 19 Vict. c. 119, it is provided, that in every "passenger ship" sweet and wholesome provisions and pure water, in proper casks, must be properly stowed on board in sufficient quantities to allow during the whole of the voyage of a regular supply which is fixed by the act (p). By sect. 30, the length in time at which different voyages are to be computed, for the purposes of the act, is also fixed (q); and by sect. 50, any "passenger ship" put- Of food and water.

(n) No part of any berth may be placed within nine inches of any water-closet erected in the between-decks; see s. 21 of the 18 & 19 Vict. c. 119.

(o) This space must be under the poop, or in the round-house, or a deck-house, or on the upper passenger deck. It must also be supplied with proper beds, bedding, and utensils; see s. 24. Where as many as fifty female passen-

gers are carried there must be two water-closets under the poop, or on the upper deck; see s. 25.

(p) The directions as to the size and description of the casks to be passed by the emigration officers, which have been issued by the emigration commissioners, will be found *post*, Appendix, p. ccxcvii.

(q) The emigration commissioners are

ting back after having been to sea, or being detained in port more than seven days after clearance, must renew this supply.

It is provided by sect. 34 of this act, that where vessels are intended to call at a place in the course of the voyage for the purpose of watering, and the voyage is thus to be performed in portions, and an engagement to that effect is inserted in the bond given to the Crown, it is allowable to carry a supply of water sufficient only for the computed length of the voyage to that place. Regulations are contained in the statute to secure the actual calling of the vessel there, and water casks must be carried which are sufficient to contain the quantity of water required for the longest portion of the voyage.

By sect. 31, the provisions and water must be approved of by the emigration officers, who must also ascertain that there is on board an ample supply of wholesome provisions and pure water for the victualling of the crew, and of the other persons, not passengers, who are carried in the ship. These officers may reject and mark provisions and water not of a good quality or condition, and may direct the stores to be re-landed and the water emptied (r).

By sects. 31 and 32, if a clearance is obtained for any "passenger ship" not properly stored, or if rejected provisions are re-shipped in the same or any other "passenger ship," heavy penalties are incurred.

By sect. 102 of the act, similar issues of pure water and good provisions must be made by the master of every "passenger ship" bringing passengers *into* the United Kingdom from any place out of Europe.

By sect. 59, the Queen may by order in council prescribe rules and regulations for permitting the use on board of "passenger ships" of an apparatus for distilling water, and for de-

empowered to alter this table from time to time. *Ib.* See the table now in force, *post*, Appendix, p. clxxxviii. The computed lengths of the voyages are different with respect to sailing vessels and vessels propelled by steam engines of a certain power.

(r) The provisions are tested by the arbitrary selection of some of the barrels, which are bored through with an

auger, so that a fair sample may be brought up and tasted. The statute requires, for the purpose of preventing fraud or mistake, that the stores which are on board for the crew, and which consist of articles of a like description to those which are to be furnished to the passengers, should not be inferior to them in quality. See s. 31.

fining in such cases the quantity of fresh water to be carried in tanks or casks for the passengers (*s*).

By sect. 35 of the 18 & 19 Vict. c. 119, a fixed supply of Dietary scales. water and provisions must be furnished by the master of every "passenger ship" to the passengers during the voyage, and during any detention in its course. The water must be issued daily, at the rate of three quarts a day to each statute adult, exclusive of the quantity necessary for cooking articles issued in a cooked state.

The weekly scale of provisions for each statute adult, as laid down in this act, is as follows:—

	For Voyages not exceeding 84 Days for Sailing Vessels, or 50 Days for Steamers.	For Voyages exceeding 84 Days for Sailing Vessels, or 50 Days for Steamers.
	lbs. oz.	lbs. oz.
Bread or biscuit, not inferior in quality to navy biscuit	3 8	3 8
Wheaten flour	1 0	2 0
Oatmeal	1 8	1 0
Rice	1 8	0 8
Peas	1 8	1 8
Potatoes	2 0	2 0
Beef	1 4	1 4
Pork	1 0	1 0
Tea	0 2	0 2
Sugar	1 0	1 0
Salt	0 2	0 2
Mustard	0 $\frac{1}{2}$	0 $\frac{1}{2}$
Black or white pepper, ground	0 $\frac{1}{2}$	0 $\frac{1}{2}$
Vinegar	One gill.	One gill.
Lime juice . . . . .	. .	0 6
Preserved meat . . . . .	. .	1 0
Suet . . . . .	. .	0 6
Raisins . . . . .	. .	0 8
Butter . . . . .	. .	0 4

The following substitutions in the above-mentioned scale are

(*s*) See orders in council for this purpose, dated 6 May, 1857, and 13 May, 1859, *post*, Appendix, p. ccxcviii.

allowed by this statute, at the option of the master, if the substituted articles are mentioned in the contract tickets of the passengers:—

1 lb. of preserved meat	for	1 lb. of salt pork or beef.
1 lb. of flour or of bread or biscuit, or $\frac{1}{2}$ lb. of beef or of pork	for	$\left\{ \begin{array}{l} 1\frac{1}{2} \text{ lb. of oatmeal, or} \\ 1 \text{ lb. of rice, or 1 lb.} \\ \text{of peas.} \end{array} \right.$
1 lb. of rice	for	$\left\{ \begin{array}{l} 1\frac{1}{2} \text{ lb. of oatmeal, or} \\ \text{vice versâ.} \end{array} \right.$
$\frac{1}{2}$ lb. of preserved potatoes .	for	1 lb. of potatoes.
10 oz. of currants	for	8 oz. of raisins.
$3\frac{1}{2}$ oz. of cocoa or of coffee, roasted and ground	for	2 oz. of tea.
$\frac{3}{4}$ lb. of treacle	for	$\frac{1}{2}$ lb. of sugar.
1 gill of mixed pickles . .	for	1 gill of vinegar.

These regulations have been to some extent modified by the 26 & 27 Vict. c. 51. By sect. 9 of this act, the requirements of sect. 35 of the 18 & 19 Vict. c. 119, that six ounces of lime juice shall be issued weekly to each statute adult on voyages exceeding eighty-four days' duration in sailing vessels, or fifty days in steamers, are confined to the period when the ship is within the tropics: during the other portions of the voyage the issue of lime juice may be at the discretion of the medical men, or if there be none on board, at that of the master.

And by sect. 10 of the 26 & 27 Vict. c. 51, it is provided that in addition to the substitutions which are allowed in the dietary scales and which are mentioned above, soft bread baked on board may, at the option of the master, be issued in lieu of the following articles in the following proportions:—

1 $\frac{1}{2}$ lb. of soft bread may be issued in lieu of 1 lb. of flour, or of 1 lb. of biscuit, or of 1 $\frac{1}{2}$ lb. of oatmeal, or of 1 lb. of rice, or of 1 lb. of peas.

By sect. 37 of the 18 & 19 Vict. c. 119, these dietary scales may be varied from time to time by the Emigration Commissioners, so long as an equivalent amount of wholesome nutriment is secured.

When the passengers are divided into messes the provisions must be issued to the head man of the mess. These messes are not (by sect. 36 of the last-mentioned act) to consist of more than ten statute adults in each; and the members of the same family are (if it includes a male adult) to be allowed to mess separately.

The provisions must be issued (such of them as require cooking being properly cooked) daily before two in the afternoon, and the first issue must be made on the day of embarkation (*t*).

By sects. 38 and 39 of this act, in every "passenger ship" carrying as many as one hundred passengers, there must be a passengers' steward and a passengers' cook on board, who must be rated on the ship's articles as such, and must be approved of by the emigration officers. There must be two cooks if the number of statute adults exceeds three hundred. They must be seafaring men. A convenient place for cooking must be set apart on deck, and a sufficient cooking apparatus, properly covered in and arranged with a proper supply of fuel, must also be provided.

Passengers'
steward and
cook.

By sect. 40, in all foreign "passenger ships," in which one-half of the passengers are British and the number of passengers does not exceed two hundred and fifty, one interpreter must be carried who understands and speaks intelligibly both English and the language spoken by the master and crew. There must be two interpreters where this number of passengers is exceeded. These provisions do not apply where the master and officers, or not less than three of them, understand English and speak it intelligibly (*u*).

Interpreter.

By sect. 41 of the 18 & 19 Vict. c. 119, every "passenger ship" must carry a duly qualified medical practitioner (rated on the articles) in the following cases:—

Medical man
and medicines.

- (1.) When the duration of the voyage is to exceed eighty days in the case of sailing vessels, and forty-five days in that of steamers, and the passengers on board exceed fifty.
- (2.) When the number of persons on board (including cabin passengers, officers and crew) exceeds three hundred (*v*).

(*t*) Before the passing of the 15 & 16 Vict. c. 44, there was no statutory regulation requiring that the food should be issued cooked. It was, however, usually issued in this state on the Australian but not on the American passages. It was found that when the weather was bad, and the passengers were suffering from sickness, great confusion, priva-

tion, and waste resulted from the food being issued uncooked.

(*u*) The stewards and interpreters must be employed exclusively in attendance upon the passengers, and may not assist in working the ship. *Ib.*; and s. 38.

(*v*) By s. 42, no medical man is duly qualified, within the meaning of the

We have already seen that, by sect. 43, a proper supply of surgical instruments, medicines and disinfecting fluid, approved of by the emigration officers, must be also kept on board (*w*).

Regulations
as to boats, life
buoys, &c.

The following are the regulations of the 18 & 19 Vict. c. 119, as to the carrying by passenger ships of boats, life-buoys, anchors and fire engines (*x*):—

By sect. 27, every “passenger ship” must carry throughout the voyage boats according to the following scale:—

Two boats for every ship of less than 200 tons;

Three boats for every ship of 200 and less than 400 tons;

Four boats for every ship of 400 and less than 600 tons;

Five boats for every ship of 600 and less than 1,000 tons;

Six boats for every ship of 1,000 and less than 1,500 tons;

Seven boats for every ship of 1,500 tons and upwards. No

“passenger ship,” however, is required to carry a greater number of boats than are sufficient, in the judgment of the emigration officer at the port of clearance, to carry all the persons on board of the ship (*y*).

By the same section, one of these boats must be a long boat and one must be properly fitted as a life-boat. They must be of a suitable size and description, to be approved of by the emigration officer at the port of clearance. They must be seaworthy, properly supplied with all requisites, and kept clear for immediate use. Every passenger ship proceeding southward of the equator must carry two chronometers, and at least one if proceeding northward of the equator. There must be also on board of all passenger ships three steering and one azimuth compass, four properly-fitted life-buoys, some adequate means for making night and fog signals, a fire-engine, and not less than three bower anchors with cables, to be approved of by the emigration officer.

act, unless he is entitled to practise as a physician, surgeon or apothecary in the United Kingdom, or (in the case of foreign ships) in the country to which the ship belongs; nor, unless his name shall have been notified to the emigration officer at the port of clearance, and shall not have been objected to; nor, unless he is provided with proper surgical instruments, to the satisfaction of the officer. Where, however, the majority of the passengers in any passenger ship (or as many as three hundred) are

foreigners, any medical practitioner approved of by the emigration officer may be carried. *Ib.*

(*w*) The lists of surgical instruments and medicines issued by the emigration commissioners will be found *post*, App. pp. ccc—ccci.

(*x*) See *ante*, p. 515, as to the requirements of the M. S. Act, 1854, on this subject.

(*y*) The boat scale sanctioned by the emigration commissioners will be found *post*, App. p. ccxiv.

By sect. 28 of this act, it is provided, that every passenger ship must be manned with an efficient crew for the intended voyage, to the satisfaction of the officer from whom a clearance is demanded. The strength of the crew must not be diminished or any of the men changed when once passed by the officer, without his consent in writing or that of the mercantile marine office superintendent (z).

Manning of ships.

It was provided by sect. 19 of the 18 & 19 Vict. c. 119, that no "passenger ship" should be allowed to clear out or proceed to sea with any horses, cattle, gunpowder, vitriol, lucifer matches, guano, or green hides on board, as cargo, or with any other article on board, whether as cargo or ballast, which was deemed by the emigration officer at the port of clearance likely to endanger the health or lives of the passengers, or the safety of the ship. It was also provided by that section that no part of the cargo or stores, or of the passengers' luggage, should be carried on the upper deck, or on the passengers' decks, unless in the opinion of the emigration officer it was so placed as not to impede the light or the ventilation, or to interfere with the comfort of the passengers; nor unless it was stowed to his satisfaction (a).

Articles the carriage of which is prohibited.

These provisions have, however, been modified by the 26 & 27 Vict. c. 51. This act provides by sect. 8, that, notwithstanding the prohibition contained in the earlier act in this respect, horses and cattle may be carried as cargo in passenger ships, subject to the following conditions:—

- (1.) The animals may not be carried on any deck below the deck on which passengers are berthed, nor in any compartment in which passengers are berthed, nor in any adjoining compartment, except in ships built of iron, and

Conditions under which horses and cattle may be carried.

(z) By the same section an appeal in writing to the emigration commissioners is given to the owner or charterer against the decision of the emigration officer in this respect. The commissioners may then appoint (at the expense of the appellant) two other officers or persons to examine into the matter, and their decision is conclusive.

(a) By the same section, the space so occupied is (unless occupied by passengers' luggage) to be excluded in calculating the space by which the

number of passengers is regulated. Before the passing of the Passengers Act, 1852, no part of the cargo could be stowed in the between-decks. But it was found when the cargo consisted of heavy articles, that inconvenience and danger resulted from its being compulsory to stow the whole of it below. See *ante*, p. 264, where the provisions of the M. S. Act, 1854, and of the M. S. A. Amendment Act, 1862, as to the carrying of dangerous goods are mentioned.

of which the compartments are divided off by water-tight bulkheads extending to the upper deck.

- (2.) Clear space on the spar or weather deck must be left for the use and exercise of the passengers, at the rate of at least ten superficial feet for each statute adult.
- (3.) No greater number of passengers may be carried than in the proportion of fifteen to every one hundred tons of the registered tonnage.
- (4.) In passenger ships of less than five hundred tons registered tonnage not more than two head of large cattle may be carried, nor in passenger ships of larger tonnage more than one additional head of such cattle for every additional two hundred tons of the ships registered tonnage, nor may more in all be carried in any passenger ship than ten head of such cattle (*b*).
- (5.) Proper arrangements must be made, to the satisfaction of the emigration officer at the port of clearance, for the housing, maintenance, and cleanliness of the animals, and for the stowage of their fodder.
- (6.) Not more than six dogs, and no pigs or male goats, may be conveyed as cargo in any passenger ship.

By sect. 62 of the 18 & 19 Vict. c. 119, no person may directly or indirectly sell any spirits or strong waters during the voyage to any passenger.

Regulations
for preserving
order, &c.

By sect. 59 of the last-mentioned act, the Queen in Council is empowered to make regulations for the following purposes:—

- (1.) For preserving order, promoting health and securing cleanliness and ventilation on board of “passenger ships” proceeding from the United Kingdom to any port or place in the Queen’s possessions abroad.
- (2.) For permitting the use on board of “passenger ships” of an apparatus for distilling water, and for defining in these cases the quantity of fresh water to be carried in tanks or casks for the passengers.
- (3.) For prohibiting emigration from any port at any time

(*b*) The terms “large cattle” include both sexes of horned cattle, deer, horses and asses. Four sheep of either sex, or four female goats are equivalent to and may be carried in lieu of one head of

large cattle. For any breach of the regulations contained in this section, the owner, charterer and master, are liable to a penalty not exceeding 100*l.* and not less than 5*l.* *Ib.*

when choleraic or any epidemic disease may be generally prevalent in the United Kingdom or any part of it, or for reducing the number of passengers allowed to be carried in "passenger ships" generally, or from any particular ports under the provisions of the act.

- (4.) For requiring duly qualified medical practitioners to be carried in "passenger ships," in cases where they are not required to be carried under the provisions of the act (c).

By sects. 60 and 61, the medical practitioner on board (aided by the master), or the master alone, if there is no medical man on board, is bound to exact obedience to all these regulations. Abstracts of the act and of the regulations must be posted up on board, and any infringement of them, or obstruction to their execution, and any riotous or insubordinate conduct, or offence against any of the provisions of the act, may be punished by fine and imprisonment on a conviction before two justices. Any person defacing or displacing the abstracts is also liable to a fine.

Provisions were contained in sects. 51, 53 and 54 of the 18 & 19 Vict. c. 119, with reference to the forwarding of passengers in cases of wreck and to their maintenance in the meantime; and also with reference to passengers landed at places other than those at which they had contracted to land. These sections have, however, been repealed by sect. 12 of the 26 & 27 Vict. c. 51, and the following provisions have been substituted by that act in lieu of them.

Forwarding passengers in cases of wreck, &c.

By sect. 14 of the 26 & 27 Vict. c. 51, if any passenger ship is wrecked or rendered otherwise unfit to proceed on her intended voyage while in any port of the United Kingdom, or after the commencement of the voyage, and if the passengers or any of them are brought back to the United Kingdom, the master, charterer, or owner, must, within forty-eight hours, give a written undertaking to the following effect (d).

If the ship has been wrecked or rendered unfit to proceed,

(c) The order in council now in force relating to this subject, which was issued on the 25th February, 1856, will be found *post*, App. p. cccv. Before the passing of the 18 & 19 Vict. c. 119, an order in council, dated the 16th Oc-

tober, 1852, was in force under the Passengers Act, 1852.

(d) The undertaking must be given to the nearest emigration officer, or in his absence to the chief officer of customs. *Id.*

the undertaking must be that the owner, charterer, or master, will embark and convey the passengers in some other eligible ship to sail, within six weeks from that date, to the place for which their passage has been taken.

If the ship has put into port in a damaged state, the undertaking must be that she shall be made seaworthy and fit in all respects for the intended voyage, and shall within six weeks from that date sail again with her passengers.

By the same section, in either of the above cases the owner, charterer, or master must until the passengers proceed on their voyage, either lodge and maintain them on board in the same manner as if they were at sea, or pay to them subsistence money after the rate of one shilling and sixpence a day for each statute adult, unless they are maintained in any hulk or establishment under the superintendence of the emigration commissioners, in which case the subsistence money must be paid to the emigration officer. If the substituted ship or damaged ship does not sail within the time prescribed, or if default is made in any of the requirements of this section, the passengers, or any emigration officer on their behalf, may recover, by summary process, (in the manner provided in the 18 & 19 Vict. c. 119,) all their passage money from the person to whom, or on whose account it has been paid, or from the owner, charterer, or master at the option of the passengers or of the emigration officer (*e*).

By sect. 15 of the 26 & 27 Vict. c. 51, if any passengers or cabin passengers of any passenger ship find themselves, without neglect or fault of their own, at a colonial or foreign place other than that for which the ship was originally bound, or at which they have (or the emigration commissioners or any public officer or other person on their behalf has) contracted that they shall be landed, the British local authorities may forward them to their destination, unless the master, within forty-eight hours of their arrival, gives a written undertaking to forward them or carry them to it within six weeks, and performs this undertaking (*f*). By sect. 16, passengers who are forwarded under these circumstances are not, however, entitled to the return of

(*e*) In these cases the emigration officers may, if they think it necessary, direct that the passengers shall be removed from the ship at the expense of the master. Any passenger refusing to leave the ship after this direction is

liable to a penalty or to imprisonment not exceeding a month. *Ib.*

(*f*) The undertaking must be given to the governor of the colony, or to the consular officer on the spot. *Ib.*

their passage money, or to compensation for their loss of passage under the provisions of the earlier act.

By sect. 52 of the 18 & 19 Vict. c. 119, it is provided that if the passengers or cabin passengers of any passenger ship are taken off from the ship, or picked up at sea from any boat, raft or otherwise, the expense thereby incurred may be defrayed by one of the secretaries of state, if they are conveyed to any place in the United Kingdom, or by the governor of the colony, or consular officer, if they are landed in any English colony, or in a foreign country.

By sect. 16 of the 26 & 27 Vict. c. 51, the expenses incurred by the British authorities in the cases provided for by sect. 15 of that act, and by sect. 52 of the 18 & 19 Vict. c. 119, including the expenses of maintaining the passengers until they are forwarded, and the cost of necessary bedding, provisions, and stores, become a debt to the Crown from the owner, charterer and master, and they are recoverable from them, or any of them, in the same way as an ordinary Crown debt (*g*). No greater sum can, however, be recovered than twice the total amount of passage money received or due to and recoverable by the owner, charterer or master, on account of the whole number of passengers and cabin passengers embarked in the ship; which amount must be proved by the defendant if he claims the advantage of this limitation (*h*).

By sect. 55 of the 18 & 19 Vict. c. 119, no insurance effected in respect of any passages, or of any passage or compensation money, by any one made liable, in the events mentioned above, to provide the passages or pay the money, or in respect of any other risk under the act, is invalid by reason of the nature of the risk or interest.

By sect. 56 of this act, no passenger may be landed without his previous consent at any other place than that for which he has contracted, unless the landing is necessary owing to perils of the sea or other unavoidable accident. Disembarkation.

(*g*) It is provided by the same section, that a certificate in a form given in the schedule to the act (see *post*, App. p. ccxlv) and signed by the secretary of state, governor, or consular officer, stating the amount of these expenses shall be receivable in evidence,

and be deemed sufficient evidence of the amount unless the defendant pleads and proves that it is false or fraudulent, or pleads and proves facts showing that the expenses were not duly incurred under the provisions of these statutes.

(*h*) *Ib.*

By sect. 57 of the 18 & 19 Vict. c. 119, every passenger in a "passenger ship" is entitled at the end of his voyage to sleep and be maintained on board for forty-eight hours, unless the ship proceeds sooner on her further voyage.

Common law remedies preserved.

By sect. 58, it is expressly provided that nothing in the act contained is to abridge or take away any right of action which may accrue to any passenger in any ship, or to any other person, in respect of the breach or non-performance of any contract with the master, charterer, or owner of any ship, or their agent, or any passage broker.

It is also provided by sect. 65 of this statute, that in the absence of any agreement to the contrary, the owner is to be the party ultimately responsible as between himself and the other persons made liable by the act in respect of any disobedience to its provisions; and that these last-mentioned persons shall be entitled, in the event of their paying to any passengers any sums of money payable under the act, to recover the same with costs from the owner, in the absence of any such agreement.

This act also contains some important provisions with reference to passage brokers and their agents.

Passage brokers.

By sect. 66, no person whatever (except the Emigration Commissioners, and persons contracting with them, or acting under their authority, and persons acting as agents of passage brokers under a form of appointment prescribed by the act) may directly or indirectly act as a passage broker, in respect of passages from the United Kingdom to any place out of Europe, and not on the Mediterranean, or sell or let, or agree to sell or let, or be concerned in the sale or letting of these passages in any ship, whether a "passenger ship" or not, until he has, with two sureties, entered into a bond to the Crown conditioned for the observance of all the regulations of the act, and has also obtained a licence(i).

(i) See the form of this bond, *post*, App. p. cccvii. These bonds must be executed in duplicate and do not require a stamp. Sworn brokers of the city of London are not required to enter into them, s. 66. The licences must be

renewed annually. See s. 67. The form of the licence and the form of appointment of a passage broker's agent will be found *post*, App. pp. cccviii, cccix. No passage broker may employ as agent in his business any person not holding

By sect. 71, heavy penalties are incurred by brokers or others Contract tickets. who receive any money in respect of these passages without giving in exchange a contract ticket, in a form directed by the act. These tickets (of which two forms are given by the statute, one of which is applicable to cabin-passages) must state, amongst other things, the amount of the passage money, the register burden of the ship, the day appointed for sailing, and the statutory victualling scale which it is intended to adopt. They must also contain an acknowledgment of the amount of passage money which has been paid, and an engagement that the persons named in them shall be provided with a passage in the ship, and to the port mentioned in the tickets (*k*).

By sect. 72, persons who alter, or cause to be altered, any contract ticket, or induce any one to part with, or to destroy or render it useless during the continuance of the contract, are liable to a penalty.

By sect. 73 of this act, any question which may arise respecting the breach of any of the stipulations in a contract ticket may, at the option of the passenger, be heard and determined in a summary way before justices (*l*). Summary remedy on.

By sect. 70, a heavy penalty is imposed upon persons who, by false representation as to the size of the ship, or otherwise, or by any false pretence or fraud whatever, induce any one to engage a passage in any ship.

By sect. 75, no person may act as emigrant runner without being licensed and registered, and every runner must, while acting, wear a badge. The magistrates of any district may (by sect. 76) license persons recommended in writing by an emigration officer, or by the chief constable or head officer of police, to act as runners. These licences are registered by the nearest emigration officer, and must (by sect. 77) be renewed annually (*m*). Every runner must (by sect. 78) produce his Emigrant runners.

from him such an appointment. See s. 69.

(*k*) See the form of these tickets, *post*, App. pp. cccx, ccxci. They are not liable to stamp duty. The commissioners of emigration have power to vary the forms from time to time. All directions contained on the face of the tickets must be obeyed as if set forth in the statute; see s. 71. Passengers are

bound to produce their tickets on demand to any emigration officer in the United Kingdom, s. 74.

(*l*) The amount awarded must not exceed the passage money and 20*l*.; and no passenger can use this summary remedy if he has obtained compensation or redress under any of the other provisions of the act; see s. 73.

(*m*) By s. 81, lists of the runners,

badge for inspection on demand; and he must if he changes his place of abode give notice to the emigration officer of the place where he is licensed (*n*); and it is provided by sect. 80, that no runner shall be entitled to recover from any passage broker any fee, commission, or reward for services connected with emigration, unless he acted under the written authority of the passage broker; nor may he take or demand from any person about to emigrate any fee or reward for procuring the passage or in any way relating thereto.

This act also enables the trustees of docks to make bye-laws, subject to the approval of the Secretary of State, for the regulation of the landing and embarkation of emigrants, and for licensing porters to attend upon them, and for storing their luggage, and admitting persons to or excluding them from the docks (*o*).

**Recovery of
penalties, &c.**

Numerous provisions are also contained in the Passengers Act, 1855 (the 18 & 19 Vict. c. 119), for the recovery and application of penalties, for the recovery of passage and subsistence monies, and of compensation, and for the protection of persons acting in pursuance of the act (*p*). It provides also by sect. 94, that where no time is expressly limited within which complaints for any breach of the act are to be made, they must be laid within twelve calendar months from the time when the matter of complaint arose, or, in case the master of the ship is the offender, within the same period after his return to the country in which the cause of complaint arose.

and of the persons authorized to act as agents, must be exhibited in the offices of the brokers, and sent to the emigration officers. These provisions, and those of the earlier acts in this respect, were intended to check the gross abuses of the system of "*emigrant runners*," who interposed between the emigrants and the passage brokers (often without authority), and extorted from the brokers a large percentage on the passage money, which became indirectly a charge on the emigrants by raising the rate of the passage money. In Liverpool this percentage has amounted to $7\frac{1}{2}$ per cent. See the Report of the Committee of the House of Commons on Passengers Acts, August 2nd, 1851.

(*n*) The statute imposes penalties on any persons who mutilate or deface their badges, or wear them when un-

licensed, or wear any badge not belonging to them, or permit others to do so. New badges may be issued by the emigration officers if they are satisfied that the old ones are lost, or they are delivered up in a mutilated or defaced state. See ss. 78 and 79.

(*o*) By s. 83, penalties are imposed upon persons falsifying or forging documents, or assuming to act as agents of the emigration commissioners, or personating persons named in any of the emigration documents.

(*p*) See ss. 84 to 93. Any emigration officer or other person sued for anything done in pursuance of the act is entitled to ten days' notice of action; the action must, moreover, be commenced within three calendar months after the act complained of; see s. 93.

It is not necessary to consider in detail the provisions of this Colonial act as to colonial voyages. They are chiefly applicable to voyages from ports in the colonies, other than the territories of the East India Company and the island of Hong Kong. Power is however given to the Governor-General of India in Council to adopt, where it may be thought expedient, the system established by the act (*q*). By the 24 & 25 Vict. c. 52, power is given to the Governor of the Australian colonies to prescribe by proclamation rules as to the number of passengers to be carried by passenger ships from one part of Australia to another part, and for determining on what deck, and subject to what remuneration, and conditions, passengers may be carried. While such proclamation is in force, the rules contained in the Imperial act are to cease to apply to vessels to which the proclamation is applicable.

Some important provisions are also contained in the Passengers Act, 1855, with respect to vessels bringing passengers *into* the United Kingdom. These regulations are intended to compel the adoption by foreign vessels (*r*), and by vessels returning to our ports, of the more important parts of the system established by the act. Thus, by sect. 100, the master of every ship bringing passengers into the United Kingdom from any place out of Europe and not in the Mediterranean must, within twenty-four hours after arrival, deliver to the emigration officer, or in his absence to the chief officer of customs, at the port of arrival, a signed list, showing correctly the names, ages, and callings of all the passengers taken on board, and the ports at which they have been embarked, and mentioning any deaths (with their supposed cause) and any births among them during the voyage. And by sects. 101 and 102, the master of every ship, bringing passengers into the United Kingdom from any place out of Europe, is liable to heavy penalties if he has on board a greater number of

(*q*) See ss. 95 to 99. The powers given to the Governor-General of India in council by this act, have been exercised by acts 1 of 1859 and 15 of 1863. A statement will be found in the App., *post*, p. cccxiv, showing the correspondence between the sections of these Indian acts, and those of the M. S. Act, 1854.

(*r*) We have already seen (*ante*, p. 522) that the definition of a "passenger ship" which is now in force, includes all sea-going vessels whether British or foreign, carrying on any voyage to which the 18 & 19 Vict. c. 119 extends more than a certain number of passengers. See the 26 & 27 Vict. c. 51, s. 3.

passengers or persons than is allowed by the act in the case of ships carrying passengers *from* the United Kingdom ; and he is also bound, during the voyage, to provide each statute adult with pure water and wholesome provisions, in quantities not less in amount than those which must be issued to passengers proceeding from the United Kingdom.

APPENDIX.

*** *The Merchant Shipping Act, 1854, provided, by sect. 331, that all pilotage authorities should retain all powers and jurisdiction which they then lawfully possessed, so far as the same were consistent with the provisions of that Statute. The earlier Acts relating to pilotage were at that time in force (although they were subsequently repealed by the Merchant Shipping Repeal Act, 1854), so that it is necessary still to refer for some purposes to the earlier repealed Statutes. (See the text, Chapter V.) For this reason the main provisions of the 6 Geo. 4, c. 125, are retained here.*

6 GEO. 4, c. 125.

An Act for the Amendment of the Law respecting Pilots and Pilotage; and also for the better Preservation of Floating Lights, Buoys and Beacons.
[5th July, 1825.]

1. *Recites and repeals 52 Geo. 3, c. 39; 55 Geo. 3, c. 87, and all provisions in other acts relating to pilots and pilotage, repealed.*

2. And be it further enacted, That from and after the passing of this act it shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby required, after due examination, to appoint and license, under their common seal, fit and competent persons duly skilled to act as pilots for the purpose of conducting all ships and vessels sailing, navigating and passing as well up and down or upon the rivers of Thames and Medway, and all and every the several channels, creeks and docks thereof or therein, or leading or adjoining thereto, between Orfordness and London Bridge, as also from London Bridge to the Downs, and from the Downs westward as far as the Isle of Wight, and in the English Channel from the Isle of Wight up to London Bridge, and all ships and vessels sailing, navigating and passing as aforesaid (save and except as hereinafter provided) shall be conducted and piloted, within the limits aforesaid, by such pilots so to be appointed and licensed, and by no other pilots or persons whomsoever: Provided always, that it shall be lawful for all pilots heretofore licensed by the said corporation of Trinity House of Deptford Strond, until the thirty-first day of January next after the passing of this act, and whilst their licences shall respectively continue in force, but no longer, to pilot or conduct any ships or vessels within such limits as such pilots might lawfully have conducted and piloted the same immediately before the passing of this act; and the licences so heretofore granted to such pilots respectively as aforesaid shall, unless revoked or suspended as hereinafter mentioned, continue in force, notwithstanding this act, until the said thirty-first day of January, so that such pilots respectively do in all things conform themselves to the provisions of this act, and the bye-laws, rules, orders and regulations hereinafter directed to remain in force or to be established under the same.

The corporation of Trinity House of Deptford Strond to license pilots to act within certain limits.

Pilots heretofore appointed may act until the 31st January next.

3. And be it further enacted, That no person shall be licensed by the said corporation of Trinity House of Deptford Strond as a pilot who shall not have served as mate for three years on board of or who shall not have

No person shall be licensed by the corporation, except as herein

specified, nor take charge of a ship drawing more than 14 feet water until he shall have acted three years, and have been then examined and again approved.

Penalty as well by person acting as by the person in command permitting him.

been for one year in the actual command of a square-rigged vessel of not less than eighty tons register tonnage as to licences for the North Channel upwards, and not less than one hundred and fifty tons register tonnage as to licences for the North Channel, Queen's Channel, South Channel, or other channels downwards, or who shall not have been employed in the pilotage or buoyage service of the said corporation of Trinity House for seven years, or who shall not have served an apprenticeship of five years to some pilot vessel licensed under the said act passed in the fifty-second year of the reign of his said late Majesty, or under this act; and that no person so licensed shall take charge as a pilot of any ship or vessel drawing more than fourteen feet water in the rivers Thames or Medway, or any of the channels leading thereto or therefrom, until such person shall have acted as a licensed pilot for three years, and shall have been after such three years, on re-examination, approved of in that behalf by the said corporation of Trinity House, on pain of forfeiting ten pounds for every such offence, as well by the person acting as such pilot, as also by the master or other person having the command of such ship or vessel, who shall permit any such person to take charge as a pilot of the same, contrary to the provision aforesaid.

4. *Requires pilots to pay annually 3l. 3s., and 6d. in the pound on their earnings, to the Trinity House, to be applied to the purposes of the Pilots' Fund.*

The corporation of Trinity House shall appoint sub-commissioners to examine pilots at the requisite ports, and on their certificate of qualification may grant licences.

5. And be it further enacted, That it shall be lawful for the said corporation of Trinity House of Deptford Strond and they are hereby required, to appoint from time to time (as often and for such periods as they in their discretion shall think fit) proper and competent persons at such ports or places in England as they may think requisite (except within the liberty of the Cinque Ports, and all such other ports and places within or for which particular provision shall have been made by any act or acts of Parliament, or by any charter or charters for the appointment of pilots), not to exceed five nor less than three persons at each port or place for which any such appointment shall be made, which persons so to be appointed shall be called Sub-Commissioners of Pilotage, and shall take the oath in the schedule hereunto annexed marked (C.), for the faithful discharge of their duty; and such persons so to be appointed shall examine and they are hereby authorized (so long as their respective deputations or appointments shall not be revoked, or superseded by the appointment of other persons in their places), to examine into the qualification of persons to act as pilots for such respective ports and places and the adjoining coasts specified in their respective deputations or appointments as aforesaid; and it shall be lawful for the said corporation, upon their receiving a satisfactory certificate under the hands of any three of the persons so to be appointed, where the whole number at any port or place shall consist of four or five, and of any two where the whole number shall consist of three, that the person examined as aforesaid is duly qualified to act for such port or ports and the adjoining coasts, to give a licence to such person to act as a pilot within the particular limits (describing the same) for which he shall have passed such examination.

The Trinity Houses of Hull and Newcastle may appoint sub-commissioners.

Sub-commissioners already appointed shall continue to act.

6. Provided always, and be it further enacted, That it shall be lawful for the corporations of the Trinity Houses of the ports of Hull and Newcastle respectively to appoint sub-commissioners of pilotage to examine pilots, and give licences for them to pilot ships and vessels into or out of any ports, harbours or places within the limits of their respective jurisdictions, anything in this act contained to the contrary notwithstanding: Provided always, that such sub-commissioners as have been already appointed, either by the said corporation of Trinity House of Deptford Strond, or by the said corporations of the Trinity Houses of the ports of Hull and Newcastle respectively, under the authority of any act or acts of Parliament heretofore

passed shall continue to act in the same manner as if they were appointed under this act.

7. And be it further enacted, That when and as soon as the said corporation of Trinity House of Deptford Strond shall have licensed pilots for any particular port or ports, and the respective coasts near the same as aforesaid, they shall cause notice of such licences to be published by fixing up such notice in writing at the Trinity House and at the Custom House in London, and also at the respective custom houses of the ports for which, and for the coasts near the same, such licences shall be granted, and shall also afterwards cause such notice to be published in the *London Gazette*, and in one or more of the newspapers circulated in that part of the country where the ports shall respectively be situated, which publication in the *London Gazette* shall be good and sufficient evidence of such notice having been given; and from and after a time or times to be limited in the said notice, which shall not in any case, or in relation to any ships or vessels whatever, be less than six weeks from the publication thereof as aforesaid, and shall be proportionably more, at the discretion of the said corporation, in relation to ships and vessels engaged in foreign voyages at the time of such publication, all ships and vessels sailing, navigating or passing into or out of the said respective ports, or upon the coast thereof (save and except as hereinafter mentioned), shall be conducted and piloted by such pilots only as shall be so licensed as aforesaid, and by no other pilots or persons whomsoever.

Notice of appointment of pilots by the corporation of Trinity House of Deptford Strond to be fixed up at the Trinity House, &c., after which no other pilot or person shall act.

8. And be it further enacted, That it shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby authorized and required to establish, vary and alter from time to time, as circumstances shall render the same necessary, rates of pilotage, in relation to all pilotage performed in any river, port or place, or upon any coast whatever, by any pilot or pilots already licensed, or who shall be licensed by the said corporation, upon their receiving certificates of examination from sub-commissioners of pilotage as aforesaid, which rates shall be regulated by and proportioned as well to the size and draught of water of the vessels, as to the distance piloted, the detention and responsibility of the pilot, and such other circumstances as the said corporation may think fit to take into consideration in fixing and establishing such rates; of which establishment or alteration of rates of pilotage notice shall be given, by hanging up printed tables thereof, corrected from time to time as variations therein shall be made, at the several custom houses at the ports to which the said rates shall apply; and no greater or less rates, or other reward or emolument for such pilotage, shall under any pretence whatever be demanded, solicited, received, paid or offered, on pain of forfeiting ten pounds for every such offence, as well by the person demanding, soliciting or receiving, as by the person paying or offering such greater or less rates, reward or emolument; provided that ships returning by distress of weather, contrary winds or on account of accident, into ports in the districts of the Isle of Wight, Plymouth and Falmouth, shall be subject to pay one-half of the common pilotage in the said ports.

Trinity House shall establish rates for pilotage performed by pilots licensed on certificates.

Of which rates tables shall be hung up at the Custom Houses of the respective ports, and no greater or less rates shall be received or paid.

9. Provided always, and be it further enacted, That if the major part in number of the pilots who shall be licensed by the said corporation of Trinity House of Deptford Strond for any particular port or place, in consequence of their receiving certificates of examinations as aforesaid, shall be dissatisfied with the rates so established or altered for such port or place, or in case any owner of any ship or vessel interested in any such rates shall be dissatisfied therewith, it shall be lawful for such parties respectively to appeal to his Majesty, his heirs and successors, in his or their most honourable Privy Council, and for any committee of such Privy Council, calling to their assistance any such persons as they may think fit, to hear and determine the matter of such appeal or appeals, and to settle, alter and

Majority of pilots, or any shipowner, being dissatisfied with the rates, may appeal to Privy Council.

regulate such rates as to them shall appear to be expedient, in case the matter of such appeal shall, in the discretion of the said Privy Council or committee thereof, appear to require the making of any order therein.

Licences to be granted for one year and renewable.

10. And be it further enacted, That all and every the licences to be granted under the authority of this act by the said corporation of Trinity House of Deptford Strond shall be granted in the first instance up to and until the thirty-first day of January next ensuing the date thereof, and no longer; and that the same licences, and also all and every the licences heretofore granted by the said corporation of Trinity House of Deptford Strond, and which shall be in force at the time of the passing of this act, shall and may be renewed and confirmed from year to year, up to and until the thirty-first day of January in every year, and no longer, at the discretion of the said corporation, such renewal and confirmation to be by indorsement on such licences respectively, signed by the secretary to the said corporation for the time being, or by such other person or persons as shall or may be thereunto authorized by the said corporation.

Corporation of Trinity House may make bye-laws and annex penalties for breach of them.

11. And be it further enacted, That all persons licensed to act as pilots, or in pilot vessels, by the said corporation of Trinity House of Deptford Strond, by virtue of this act, shall from time to time and at all times hereafter be subject to the regulations and government of the said corporation, who are hereby authorized and empowered, as well for ensuring the good conduct and constant attendance of such pilots upon their duty as for enforcing the general purposes of this act, from time to time to make and frame all such bye-laws, rules, orders, regulations and ordinances as they shall think fit, therein specifying and directing also what annual or other sums shall be paid by any such pilots to the sub-commissioners of pilotage, for the examination of such pilots, and for granting and renewing or confirming their licences from time to time; and it shall be lawful for the said corporation respectively to annex such reasonable penalties and forfeitures for the breach of such bye-laws, rules, orders, regulations and ordinances, when made, as to them shall seem expedient in that behalf, and from time to time to annul, alter and amend all or any of the existing bye-laws, rules, orders, regulations and ordinances, and to make such other and new bye-laws, rules, orders, regulations and ordinances as they shall think proper, so as such bye-laws, rules, orders, regulations and ordinances be made conformable to the true intent and meaning of this act, and shall not be repugnant to the laws of this realm: Provided always, that no bye-laws, rules, orders, regulations or ordinances hereafter to be made by the said corporation shall have force or effect before they shall have been examined, sanctioned and approved by the Chief Justice of his Majesty's Court of King's Bench, or by the Chief Justice of his Majesty's Court of Common Pleas, the sanction and approbation of either of which Chief Justices shall be verified under his hand and seal; and all and every such bye-laws, rules, orders, regulations and ordinances, when so made and confirmed as aforesaid, shall be observed and kept and put in execution, and have the same force and effect and operation, to all intents and purposes, as if the same were respectively enacted by this act.

Bye-laws to be sanctioned by the Chief Justice of the King's Bench or Common Pleas.

Proposed bye-laws to be previously transmitted to the Privy Council, and also to the commissioners of customs, and printed copies to be hung up at the Custom Houses.

12. And in order that all such bye-laws, rules, orders, regulations and ordinances may be previously examined by the parties interested therein, be it further enacted, That copies of all such proposed bye-laws, rules, orders, regulations and ordinances shall be transmitted to his Majesty's privy council, and to the commissioners of customs in London, three calendar months before the same shall be submitted to such chief justice as aforesaid; and the commissioners of the customs are hereby required, upon the receipt of such copy, to cause the same to be printed and hung up, as soon as the same can be done, in the several custom houses of the principal ports in Great Britain, there to be open to the inspection of all persons

interested therein at all seasonable times ; and notice shall be given in the *Gazette* of such proposed bye-laws being so hung up for inspection as aforesaid.

13. And be it further enacted, That all such bye-laws, rules, orders, regulations and ordinances as shall be so made and confirmed as aforesaid shall be printed, and shall be hung up in some public or conspicuous place in the several custom houses of the ports of England within the limits for which the pilots respectively shall be licensed, and also at the Trinity House in London.

Bye-laws confirmed to be hung up in the Custom Houses and the Trinity House.

14. And be it further enacted, That from and after the passing of this act it shall and may be lawful for the Lord Warden of the Cinque Ports and Constable of Dover Castle, or his lieutenant for the time being, and they are hereby required, to appoint and license fit and competent persons duly skilled as pilots for the purpose of conducting all ships and vessels, sailing, navigating and passing from or by Dungeness, up the rivers Thames and Medway, to London Bridge and Rochester Bridge, and all and every the several channels, creeks and docks of the same, and from the south buoy of the Brake to the westward as far as the west end of the Owers, and all ships and vessels sailing, navigating and passing as aforesaid (save and except as hereinafter provided) shall be conducted and piloted within the limits aforesaid by such pilots so appointed and licensed, and by no other pilots or persons whomsoever : Provided always, that it shall be lawful, after the passing this act, for any pilot or pilots heretofore licensed by the said Lord Warden and Constable for the time being, or his lieutenant for the time being, to pilot or conduct any ship or vessel within such limits as such pilot or pilots might lawfully have conducted and piloted the same immediately before the passing of this act ; and the licences so heretofore granted to such pilots as aforesaid shall continue in force notwithstanding this act, so that such pilots do in all things conform themselves to the provisions of this act, and the rules and regulations hereinafter directed to remain in force or be established under the same.

The Lord Warden of the Cinque Ports to license pilots to act within certain limits.

Existing licences to continue in force.

15. And be it further enacted, That no person shall, from and after the passing of this act, take charge of any ship or vessel as a pilot belonging to the society or fellowship of pilots of Dover, Deal and the Isle of Thanet, commonly called the Cinque Port pilots, before he shall be examined by the master and two wardens or by four wardens of the said society or fellowship for the time being touching his abilities, and shall be approved and admitted into the society or fellowship of the Trinity House of Dover, Deal and the Isle of Thanet, by the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, or his lieutenant for the time being ; and if any person shall presume to act as a pilot belonging to the said society or fellowship without having been so examined, approved and admitted as aforesaid, every such person shall for the first offence forfeit ten pounds, for the second twenty pounds, and for every other offence forty pounds.

No person shall take charge of any ship as a Cinque Port pilot till he has been examined and admitted.

Penalty.

16. And be it further enacted, That no person belonging to the said society or fellowship of pilots of Dover, Deal and the Isle of Thanet, commonly called Cinque Port pilots, shall from and after the passing of this act be allowed to take charge as a pilot of any ship or vessel drawing more than eleven feet six inches water, until he shall have been licensed and acted as a pilot for three years ; or of any ship or vessel drawing more than fourteen feet water, until he shall have been licensed and acted as a pilot for two years more, making five years ; or of any ship or vessel drawing more than seventeen feet water, until he shall have been licensed and acted as a pilot two years more, making seven years in the whole ; and at the expiration of such period of seven years such pilot shall be again examined

Nor of ships drawing more than 11 feet 6 inches, until he shall have been licensed and have acted three years ; 14 feet, five years ; and 17 feet, seven years.

as to his fitness and competency, and if he shall be approved of, and licensed on such examination, shall be authorized and allowed and entitled to take charge of any ships or vessels of any draught of water.

17. The Master and Wardens of the Trinity House of Dover, Deal and Thanet appointed to examine pilots are to take the oath in Schedule marked (B.)

A number of Cinque Port pilots shall constantly ply at sea to take charge of ships coming from the westward, and upon signals of fleets, all pilots shall prepare to go off.

18. And be it further enacted, That a proper and sufficient number of pilots of the Cinque Ports, not less than eighteen at any one time, and in succession from time to time, without intermission or any unnecessary delay, shall at all seasonable times, by day and night, constantly ply at sea, or be afloat between the South Foreland and Dungeness, to take charge of ships and vessels coming from the westward; and such pilots shall not allow any ship or vessel having a signal for a pilot flying to pass without attempting to board her; and that upon proper signals being made at and from signal houses now erected, or which may be erected on commanding situations near to Dover for that purpose, giving notice of the approach of any fleet of ships or vessels coming from the westward, all Cinque Port pilots not on duty at the time shall, according to such rules and regulations as to number, rotation or otherwise as have been or shall be made in that behalf, forthwith prepare to go afloat and shall go off in sufficient time to fall in with such ships and vessels, on pain of forfeiting, in case of neglect herein, for the first offence the sum of twenty pounds, and for the second the offender shall be suspended from acting as a pilot for twelve months, and for the third offence shall forfeit his licence to act as such pilot, and shall be rendered thereby incapable of acting thereafter as a pilot.

Masters of ships from the westward not having a pilot shall display a signal for one, and facilitate his getting on board.

19. And be it further enacted, That the master or other person having the command of any ship or vessel coming from the westward, and bound to any place in the rivers of Thames or Medway, not having a duly qualified Cinque Port pilot on board, shall, on the arrival of such ship or vessel off Dungeness, and until she shall have passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, or have been at anchor for one hour, as hereinafter mentioned, display and keep flying the usual signal for a pilot to come on board; and if any duly qualified Cinque Port pilot shall be within hail or approaching and within half a mile, with the proper distinguishing flag flying in his vessel or boat, the master or other person having the command of such ship or vessel shall, by heaving to in proper time or shortening sail, or by all practicable means consistently with the safety of the ship or vessel, facilitate such pilot getting on board, and shall give the charge of piloting his ship or vessel to such Cinque Port pilot; and every person commanding any such ship or vessel who shall not display and keep flying the usual signal for a pilot to come on board, from the time such ship or vessel shall have arrived off Dungeness, and until she shall have passed the south buoy of the Brake, in a line to be drawn from Sandown Castle to the said buoy (unless in the meantime a duly qualified Cinque Port pilot shall have come on board), or who shall within the limits aforesaid decline to take on board the first duly qualified Cinque Port pilot who shall offer, or to give charge of his ship or vessel to such duly qualified Cinque Port pilot, or who shall not heave to, shorten sail or otherwise consistently with the safety of the ship or vessel facilitate such pilots coming on board as aforesaid, shall forfeit and pay double the amount of the sum which would have been demanded for the pilotage of such ship or vessel: Provided always, that if any ship or vessel coming from the westward, and bound to any place in the rivers Thames or Medway, shall anchor anywhere in the Downs between the South Foreland and a line drawn from Sandown Castle to the south buoy of the Brake, having any licensed pilot other than a duly qualified Cinque Port pilot on board, it shall not be necessary for the master of such ship or vessel to

Penalty.

Ships anchoring within certain limits, not having a Cinque Port pilot, shall display a signal, and Cinque Port

display or keep flying the usual signal for a pilot to come on board thereof any longer than for and during one hour next after such ship or vessel shall so have anchored as aforesaid; and it shall be lawful for any duly qualified Cinque Port pilot, at any time before such ship or vessel shall have been at anchor one hour with such signal flying as aforesaid, to repair on board the same, and to take charge of her up the said rivers, but not otherwise.

pilots may within an hour repair on board, and take charge.

20. *The Court of Loadmanage is to settle the compensation to be paid to the upper book pilots by the lower book pilots for being allowed to take charge of ships of greater draught.*

21. And be it further enacted, That all persons licensed or to be licensed to act as Cinque Port pilots shall from time to time and at all times hereafter be subject to the regulations and government of the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, and it shall be lawful for the master and wardens of the said society or fellowship of pilots of Dover, Deal and the Isle of Thanet, and the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, his lieutenant for the time being, and the deputy-lieutenant for the time being, or either of them, with the assent of the commissioners of loadmanage, or the major part of them present at an assembly, commonly called a Court of Loadmanage, to be held by the said Lord Warden or his deputy as and when they shall see fit or occasion shall require, to annul, alter or amend the rules and regulations of the said Lord Warden or Court of Loadmanage which shall be in force at the time of the passing of this act, and which are hereby directed to remain in force notwithstanding the same, and to make from time to time such other sufficient rules and orders for enforcing the due observance of the provisions of this act by all Cinque Ports pilots, and for providing for the good government, constant attendance and regulation of all such pilots in going off to and taking charge of and conducting and navigating his Majesty's ships and vessels, and the ships and vessels in his Majesty's employ, and also all ships and vessels whatever and wheresoever, within the proper and usual limits of such pilots, or wherein they shall for the time being act or be, and for effectually securing the performance of all the duties and services of such pilots at all times; and all alterations and amendments in such rules and regulations so in force as aforesaid, and all other rules and regulations, or alterations or amendments thereof, hereafter to be made, shall, before the same are allowed to take effect or become binding on any person or persons whatever, be printed and transmitted to the Custom House in London, and there hung up in some conspicuous place in the long room of the said Custom House; and notices shall be published in the *Gazette*, and put up at the Custom Houses within the Cinque Ports, of such rules and regulations, or any alterations thereof, for inspection, for one calendar month, in order that any persons interested therein, whether as owners or masters of ships or pilots, or otherwise, may transmit to the Lord Warden of the Cinque Ports, or his lieutenant, any objections which they may have thereto, for the purpose of the same being altered or confirmed; and if no objection to the rules and regulations so made or altered shall be proposed, by or on the behalf of any person or persons, within the space of thirty days after the notice shall have been given and made public in the manner hereinbefore provided, they shall have the same force and effect to all intents and purposes as all other rules and regulations for the government of pilots within the jurisdiction of the Cinque Ports have; but if an objection shall be made to the Lord Warden or his lieutenant, by or on behalf of any person or persons, to any rule or regulation, or to any alteration in any rule or regulation, of which notice shall be given as aforesaid, within thirty days after the publication thereof, then and in such case the operation thereof shall be suspended until reference shall be had to his Majesty's most honourable Privy Council, who are

Cinque Port pilots to be subject to the rules and regulations of the Lord Warden, &c.

hereby authorized and empowered to hear as well any person who shall be deputed by the Court of Loadmanage as by the person or persons objecting, and finally to decide as to the confirming, altering or rejecting such rules or regulations, which decision of the Privy Council shall be final and binding on all parties; and copies of such rules or regulations shall be delivered to every member of the said society of fellowship, and also to every new member of the said society on his election, and a copy or extract thereof shall be at all times in the possession of every pilot belonging to the Cinque Ports, as well those already admitted and licensed as all others hereafter to be licensed as such pilots; and it shall be lawful in such rules and regulations to establish rates of payment out of such surplus earnings of the lower book pilots as may arise from their being allowed to take the higher classes of ships, in the absence of pilots of the upper book, under the provisions of this act, for the better support and maintenance of the upper book pilots, and also penalties and forfeitures for the enforcing such rules and regulations, and better ordering of the said pilots, and for suspending or depriving any of the said pilots of their licences for breaking such rules or orders, or omitting to do anything required by the same to be done, or for acting in anywise contrary to such rules or orders.

If such rules shall be defective, the Privy Council shall amend, correct or enlarge the same.

22. Provided always, and be it further enacted, That if any such rules and regulations so hereafter to be made in relation to Cinque Port pilots as aforesaid shall appear to be in any material point erroneous, insufficient or defective, it shall be lawful for the owner of any ship, or other person interested in the matter of such rules or regulations, to apply to his Majesty's most honourable Privy Council, who shall thereupon amend, correct or enlarge the same, or cause such other proper and sufficient rules and regulations to be drawn up for the purposes aforesaid; which rules and regulations so made, or so amended, corrected and enlarged, shall be distributed, published and made use of in such manner as his Majesty's said Privy Council shall in that behalf appoint and direct, and the same shall take effect from such time as in the said rules or regulations shall be expressed in regard to the commencement thereof.

As to the number of Cinque Port pilots, and how and when to be increased.

23. And whereas, under the provisions of an act passed in the forty-eighth year of the reign of his said late Majesty King George the Third, intituled *An Act for the better Regulation of Pilots, and of the Pilotage of Ships and Vessels navigating the British Seas*, the number of pilots of the Cinque Ports was increased to one hundred and forty, and it hath been found that the said last-mentioned number is at present, in the time of peace, more than sufficient for the trade and navigation of this kingdom: be it therefore enacted, that until the number of such pilots shall by death or otherwise be reduced below one hundred and twenty, or shall be added to, as hereinafter mentioned, it shall not be lawful for the said Lord Warden and Constable of Dover Castle or his lieutenant for the time being, without special permission in that behalf given by his Majesty's most honourable Privy Council, upon the recommendation of the said corporation of Trinity House of Deptford Strond, to fill up any more than each alternate vacancy which shall arise in the number of such pilots: Provided always, that twenty Cinque Port pilots more, or any less number of such pilots, shall and may be added to the then existing number whenever such addition shall be directed to be made by an order of such Privy Council, upon application thereto for that purpose by the said corporation of Trinity House, and in like manner from time to time, so as the number of Cinque Port pilots shall not at any one time exceed one hundred and eighty, of which said reduction or additions respectively notice shall be given by or under the authority of the Lord Warden of the Cinque Ports in the *London Gazette*, and in one or more newspaper or newspapers circulating in the counties of Middlesex and Kent.

24. And be it further enacted, That whenever such additions to the number of the said pilots shall respectively take place, as hereinbefore provided, the numbers so increased shall from thenceforth be kept up from time to time, by the appointment of pilots in succession, as often as any vacancy or vacancies shall happen by death, incapacity or dismissal: Provided always, that in time of peace no more than each alternate vacancy in the number of Cinque Port pilots shall be filled up, without a special permission in that behalf given by his Majesty's Privy Council, upon the recommendation of the said corporation of Trinity House, unless the number of such pilots shall, at the time of such filling up, be reduced below one hundred and twenty, in which case such vacancy shall and may be filled up from time to time without such permission as aforesaid.

The increased number of pilots shall be kept up:

but in peace no more than each alternate vacancy shall be filled up, without permission of Privy Council, unless number below one hundred and twenty.

25. And be it further enacted, That from and after the passing of this act the respective rates or prices hereinafter enumerated in the Tables marked (A.) and (B.) respectively in the Schedule marked (A.) to this act annexed, shall and may be lawfully demanded and received by any pilot licensed or to be licensed by the said corporation of Trinity House of Deptford Strond, or by the Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, or his lieutenant for the time being respectively, for the piloting or conducting of any ship or vessel from place to place, as expressed in the said Tables respectively; that is to say, the respective rates or prices enumerated in the said Table marked (A.) shall and may be demanded and received by any pilot licensed or to be licensed by the said corporation; and the respective rates or prices enumerated in the said Table marked (B.) shall and may be demanded and received by any pilot licensed or to be licensed by the said Lord Warden of the Cinque Ports and Constable of Dover Castle for the time being, or his lieutenant for the time being; and no greater or less rates or prices or other reward or emolument shall under any pretence whatever be demanded, solicited, received, paid or offered than such rates or prices, on pain of forfeiting ten pounds for every such offence, as well by the person demanding, soliciting or receiving, as also by the person paying or offering, such greater or less rate or price, reward or emolument.

Rates in Tables (A.) and (B.) of Schedule (A.) may be demanded by pilots, and no greater or less.

Penalty.

26. *Provides that rates may be varied by the corporation of Trinity House and Lord Warden of the Cinque Ports respectively, with the consent of the Privy Council.*

27. *Provides that persons applying for licences shall execute a bond for securing obedience to bye-laws.*

28. *Bye-laws, &c. under former act to remain valid, unless altered by this act.*

29. *Licences may be revoked, annulled or suspended.*

30. *Pilots so suspended, &c., and persons complaining against them, may appeal to the Privy Council.*

31. *Empowers the Trinity House and other societies to license vessels for the purpose of having pilots constantly in attendance in them at sea.*

32. *Directs how pilot boats are to be distinguished, and renders liable to a penalty persons concealing marks.—Pilots carried off in any other boat are to display a flag.*

33. *Imposes a penalty for carrying distinguishing flag without having a pilot on board.*

34. *Directs that a boat running before a vessel, not having a pilot, and which cannot be boarded, shall be entitled to pilotage.*

35. *Requires that the names, &c. of pilots appointed shall be transmitted to the Trinity House, and a list of all pilots annually to the Trinity House and Custom House.*

36. *Directs that the commissioners of customs shall transmit to their principal officers at ports in England the names, &c. of pilots residing within the limits of each port.*

37. *Directs that lists of vessels employed for pilotage, with the number of hands, shall be annually transmitted to the receiver of six-penny duty in the port of London.*

No pilot shall be taken to sea beyond his limits, without his consent, except in case of necessity, and then he shall receive ten shillings and sixpence per diem above his pilotage.

38. And be it further enacted, That no pilot shall be taken to sea beyond the limits of his district by the commanding officer of any of his Majesty's ships, or by the master or other person having the command of any other ship or vessel whatever, without such pilot's free consent, except under circumstances of absolute and unavoidable necessity; and then and in such case every pilot so taken to sea shall over and above his pilotage have and receive ten shillings and sixpence *per diem*, to be computed from and inclusive of the day next after the day on which the ship or vessel shall pass the limit to which such pilot was engaged to pilot her up to, and until he shall be returned to the port or place where he was taken on board, or until he shall have been discharged from the ship for a sufficient time to have enabled him to return there.

39. *Provides that pilots shall qualify themselves, and conduct ships into and out of Ramegate and other harbours.*

40. *Provides rates for such pilotage.*

41. *Provides that ships bound to the Thames, repairing to places for performance of quarantine, should pay full charges of pilotage, &c.*

Pilots quitting ships in the Thames or Medway, without consent, before arrival at the place to which bound, to forfeit pay, and be liable to penalty.

42. And be it further enacted, That if any pilot taking charge of any ship or vessel into the rivers Thames or Medway shall quit such ship or vessel at Gravesend or Standgate Creek, or in any other part of the Thames or Medway respectively, before such ship or vessel shall have arrived at the place to which she is bound in the said rivers respectively, without the consent of the captain or other person having the command thereof, unless some other duly qualified pilot shall with such consent come on board, and shall take the charge and conduct of such ship or vessel for the residue of the pilotage to be performed, every such pilot so quitting such ship or vessel shall forfeit for every such offence all pay or reward to which he might be entitled for having conducted or piloted such ship or vessel to Gravesend, Standgate Creek or such part of the Thames or Medway respectively as aforesaid, and shall also be subject to such other penalty or punishment as by virtue of any of the provisions of this act, or of the bye-laws, rules, orders, regulations and ordinances hereby directed to remain in force, or which may be made or established in pursuance hereof, any pilots shall be liable to for quitting a ship or vessel before she shall arrive at her place of destination.

Pilot to write his name in log book, and same to be inserted in report of ships entering the port of London, and reported

43. And be it further enacted, That every pilot shall write his christian and surname in the log book of every master or other person having the command for the time being of any ship or vessel entering the port of London, and required to be piloted according to the directions of this act; and every pilot or other person inserting a false name shall forfeit the sum

of twenty pounds; and the master or other person having the command of such ship or vessel shall, in making the entry or report of such ship or vessel inwards, insert or cause to be inserted in such entry or report the name or names of the pilot or pilots employed or engaged to pilot such vessel into the said port, which insertion shall be made in the said entry or report (without fee or reward) by the proper officer of the customs, who shall report the same to the corporation of the Trinity House daily, and to the Lord Warden of the Cinque Ports monthly; and such officer is hereby authorized and required to reject such entry or report, unless and until the name or names of the pilot or pilots so employed or engaged as aforesaid shall be inserted or notified to such officer for insertion in such entry or report as aforesaid; and also that the principal searcher or clearing officer of the customs at Gravesend shall demand and take the name or names of the pilot or pilots of all ships or vessels clearing outwards from the port of London, and shall transmit monthly lists of such names to the said corporation of Trinity House, on pain of forfeiting a sum not exceeding ten pounds nor less than five pounds, to be paid by each and every of the persons aforesaid who shall neglect to comply with any of the foregoing regulations.

daily to the Trinity House, and monthly to the Lord Warden of the Cinque Ports.

Monthly reports to be made of vessels clearing outwards.

Penalty.

44. And be it further enacted, That all sums of money which shall become due to any licensed pilot for the pilotage of any ship or vessel, except ships or vessels not having British registers, trading to and from the port of London, shall and may be recovered from the owners or masters of such ship or vessel, or from the consignees or agents thereof, who shall have paid or made themselves liable to pay any other charge for the said ship or vessel in the port of her arrival or delivery as to pilotage inwards, and in the port from whence she shall clear out or sail as to pilotage outwards; which sums of money shall and may be levied in such and in the like manner, according to the amount of any such sums of money as aforesaid respectively, as any penalty or penalties of the like amount may be recovered and levied under and by virtue of this act, demand thereof being made in writing at least fourteen days before such levy.

How pilotage of ships, except those not having British registers, trading to and from the port of London, may be recovered.

45. And be it further enacted, That the consignees or agents of any ship or vessel from whom any sum of money due to any licensed pilot for pilotage shall have been recovered or shall be recoverable, or by whom any such sum of money shall have been paid, are hereby authorized and empowered to retain in their hands respectively, out of any monies which they may have received or shall thereafter receive, for or on account of such ship or vessel, or the owner or owners thereof, so much as shall be sufficient to pay and discharge such pilotage, and any expenses attending the same.

Consignees or agents may retain pilotage which they have paid or are liable to.

46. *Provides in what manner pilotage of ships not having British registers trading to and from the port of London shall be paid.*

47. *Certificate of payment of pilotage to be given—Receivers to pay over to the pilot what shall be due to him; and the residue with the poundage to be carried to the pilots' fund.*

48. *Corporation of Trinity House may, out of pilotage received, reward unlicensed persons who have piloted in the absence of a licensed pilot.*

49. *Provides how the amount of pilotage outward of foreign vessels shall be ascertained.*

50. *How controversies respecting the draught of water of vessels on the Thames shall be settled.*

51. And whereas it may be expedient from time to time to relieve such

Corporation of Trinity House to

make regulations with respect to pilotage of small foreign vessels.

ships and vessels not having British registers as may come to the port of London with fish, corn or other provisions, in manner hereinafter directed : Be it therefore enacted, That it shall be lawful for the said corporation of Trinity House of Deptford Strond, and they are hereby authorized and empowered, from time to time at their discretion, to make all such regulations in relation to the piloting of ships not having British registers, bringing fish, corn or other provisions into the port of London, and which are or ought to be piloted by pilots licensed by the said corporation of Trinity House, for the ease and relief of such ships and vessels in respect of the rates or amount of pilotage hereby made payable or demandable for such ships and vessels, or for the exemption of such ships or vessels from any such rates or amount, or from any rules or regulations as to the pilotage of such ships or vessels under the provisions of this act, or of any other act of Parliament relating to pilotage, or under any law or usage whatsoever, as the said corporation of Trinity House of Deptford Strond shall from time to time deem just, proper and expedient in relation to such ships and vessels respectively, anything herein contained to the contrary thereof notwithstanding.

52. Directs that the funds arising from the surplus rates of pilotage on ships not having British registers shall be applied for relief of indigent pilots, &c.

Owners or masters of ships not to be answerable for loss from want of a proper pilot, unless arising from refusal to take one, &c.

53. And be it further enacted, That no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whatsoever from or by reason or means of no licensed pilot being on board of any such ship or vessel, or of no duly qualified pilot being on board thereof, unless it shall be proved that the want of such licensed or of such duly qualified pilot respectively shall have arisen from any refusal to take such licensed or qualified pilot on board, or from the wilful neglect of the master of such ship or vessel in not heaving to, or using all practical means consistently with her safety, for the purpose of taking on board thereof any pilot who shall be ready and offer to take charge of the same.

Owners not liable for more than the value of the ship and freight.

54. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to make the owner of any ship or vessel liable in any such case for any loss or damage beyond the value of such ship or vessel and her appurtenances, and the freight due or to grow due for and during the voyage wherein such loss or damage may happen or arise.

Owners or masters not to be liable for loss arising from incompetency of pilots.

55. And be it further enacted, That no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whomsoever from or by reason or means of any neglect, default, incompetency or incapacity of any licensed pilot acting in the charge of any such ship or vessel, under or in pursuance of any of the provisions of this act, where and so long as such pilot shall be duly qualified to have the charge of such ship or vessel, or where and so long as no duly qualified pilot shall have offered to take charge thereof.

This act not to deprive persons of remedies previously existing.

56. And be it further enacted, That nothing in this act contained shall extend or be construed to extend to deprive any person or persons of any remedy or remedies upon any contract of insurance, or of any other remedy whatsoever, which he or they might have had if this act had not been passed, by reason or on account of the neglect, default, incompetency or incapacity of any pilot duly acting in the charge of any ship or vessel, under or in pursuance of any of the provisions of this act, or by reason or on account of no pilot, or of no duly qualified pilot, being on board of any such ship or vessel, unless it shall be proved that the want of a pilot, or of

a duly qualified pilot, shall have arisen from any refusal to take a pilot or a duly qualified pilot on board, or from the wilful neglect of the master of such ship or vessel in not heaving to, or using all practicable means consistently with the safety of such ship or vessel, for the purpose of taking on board any pilot who shall be ready and offer to take charge of such ship or vessel.

57. Provided always, and be it further enacted, That no pilot licensed or to be licensed as aforesaid who shall have executed the bond hereinbefore directed to be executed by him, and shall be piloting or conducting, within the limits specified in his licence, any ship or vessel which he shall be duly qualified to pilot, or be piloting in the absence of a duly qualified pilot, shall be liable to any action for damages at the suit of the party grieved in any greater sum than the amount which shall have been specified by way of penalty in such bond, and the pilotage payable to him in respect of the voyage on which such ship or vessel shall then be, for any loss or damage which shall happen from or by reason or means of his neglect or want of skill whilst acting in his capacity of a pilot on board such ship or vessel.

Licensed pilots who have executed bond not liable for neglect or want of skill beyond its penalty and the pilotage.

58. And be it further enacted, That every master of any ship or vessel who shall act himself as a pilot, or who shall employ or continue employed as a pilot any unlicensed person, or any licensed person acting out of the limits for which he is qualified, or beyond the extent of his qualification, after any party licensed and qualified to act as such, within the limits in which such ship or vessel shall then actually be, shall have offered to take charge of such ship or vessel, or have made a signal for that purpose, shall forfeit for every such offence double the amount of the sum which would have been legally demandable for the pilotage of such ship or vessel, and shall likewise forfeit for every such offence an additional penalty of five pounds for every fifty tons burden of such ship or vessel, if the corporation of Trinity House of Deptford Strond, as to cases in which pilots licensed by or under the said corporation shall be concerned, or the said Lord Warden for the time being or his lieutenant for the time being, as to cases in which the Cinque Port pilots shall be concerned, shall think it proper that the person prosecuting should be at liberty to proceed for the recovery of such additional penalty, and certify the same in writing.

Penalty on masters of vessels piloted by any other than a licensed pilot.

59. Provided always, and be it further enacted, That, for and notwithstanding anything in this act contained, the master of any collier, or of any ship or vessel trading to Norway, or to the Cattegat or Baltic, or round the North Cape, or into the White Sea, on their inward or outward voyages, or of any constant trader inwards, from the ports between Boulogne inclusive and the Baltic (all such ships and vessels having British registers, and coming up either by the North Channel but not otherwise), or of any Irish trader using the navigation of the rivers Thames and Medway, or of any ship or vessel employed in the regular coasting trade of the Kingdom, or of any ship or vessel wholly laden with stone from Guernsey, Jersey, Alderney, Sark or Man, and being the production thereof, or of any ship or vessel not exceeding the burden of sixty tons, and having a British register, except as hereinafter provided, or of any other ship or vessel whatever whilst the same is within the limits of the port or place to which she belongs, the same not being a port or place in relation to which particular provision hath heretofore been made by any act or acts of Parliament, or by any charter or charters for the appointment of pilots, shall and may lawfully, and without being subject to any of the penalties by this act imposed, conduct or pilot his own ship or vessel when and so long as he shall conduct or pilot the same without the aid or assistance of any unlicensed pilot or other person or persons than the ordinary crew of the said ship or vessel.

Masters of certain ships may pilot same so long as not assisted by unlicensed persons.

60. Provided also, That from and after the passing of this act it shall and

His Majesty in Council may

authorize ships not exceeding sixty tons burden to be conducted without pilots, as British ships of the like burden.

may be lawful for his Majesty, by and with the advice of his Privy Council, or by any order or orders in Council, to permit and authorize ships and vessels not exceeding the burden of sixty tons, and not having a British register, to be piloted and conducted without having a duly licensed pilot on board, upon the same terms and conditions as are by this act imposed on British ships and vessels not exceeding the like burden.

Masters not liable to penalties for employing unlicensed persons whilst ship in distress.

61. Provided also, That nothing in this act contained shall extend or be construed to extend to subject the master or owner of any ship or vessel to any of the penalties of this act for employing any person or persons whomsoever as a pilot or pilots in and for the assistance of such ship or vessel whilst the same shall be in distress, or in consequence thereof, or under any circumstances which shall have rendered it necessary for such owner or master to avail himself of the best assistance which at the time could be procured, anything herein contained to the contrary thereof in anywise notwithstanding.

Master or mate, being owner or part owner, and residing at Dover, &c., may pilot his own ship in the Thames or Medway.

62. Provided always, and be it further enacted, That nothing in this act contained shall extend or be construed to extend to subject to any penalty the master or mate of any ship or vessel, being the owner or part owner of such ship or vessel, and residing at Dover, Deal or the Isle of Thanet, for conducting or piloting such his own ship or vessel from any of the places aforesaid, up or down the rivers Thames or Medway, or into or out of any port or place within the jurisdiction of the Cinque Ports.

Ships brought into any port by pilots may be removed by the master, &c., for certain purposes.

63. Provided always, and be it further enacted, That when any ship or vessel shall have been brought into any port or ports in England by any pilot duly licensed, nothing in this act contained shall extend or be construed to extend to subject to any penalty the master or mate, or other person belonging to such ship or vessel, and having the command thereof, or if in ballast any person or persons appointed by any owner or master or agent of the owner thereof, for afterwards removing such ship or vessel in such port or ports for the purpose of entering into or going out of any dock, or for changing the moorings of such ship or vessel.

Penalty for reporting to pilots a false account of a vessel's draught of water, or altering the marks denoting such draught.

64. And be it further enacted, That every master or other person having the command for the time being of any ship or vessel, who shall report, or be privy or consenting to any other person's reporting, to any pilot taking the charge of such ship or vessel, a false account of the draught of water of such ship or vessel, shall forfeit and pay for every such offence, in addition to the payment of the full rate of pilotage to the pilot entitled thereto, double the amount of such pilotage; and any master or other person having the command for the time being of any ship or vessel, or having any interest, share or property therein, who shall fraudulently alter any marks on the stem or stern post thereof, denoting the draught of water, or shall be privy and consenting thereto, shall for any such offence forfeit and pay the sum of five hundred pounds.

Description of pilot to be on his licence, &c.

65. And be it further enacted, That a particular description of the person of every pilot shall be written in or upon or endorsed on the back of his licence; and every captain or master or other person having the command of a ship or vessel shall, on receiving a pilot on board, inspect his licence; and if he shall have reason to think that such pilot is not the person to whom the licence was granted, such captain or master or other person is hereby required forthwith to transmit a copy of such licence to the corporation or other authority by whom such licence shall have been granted, stating the date thereof, together with such account and description of the person producing such licence as may lead to the discovery of the offender.

No pilot shall act until his licence

66. And be it further enacted, That no person shall take charge of any

ship or vessel, or in any manner act as a pilot, or receive any compensation for acting as a pilot, until his licence shall have been registered by the principal officers of the custom house of the place at or nearest to which such pilot shall reside, (which officers are hereby required to register the same without fee or reward,) nor without having his licence at the time of his so acting in his personal custody, and producing the same to the master of any ship or vessel, or other person who shall be desirous of employing him as a pilot, or to whom he shall offer his services, on pain of forfeiting a sum not exceeding thirty pounds nor less than ten pounds for the first offence, and for the second or any subsequent offence a sum not exceeding fifty pounds nor less than thirty pounds, and upon further pain, as to any person licensed as aforesaid, of forfeiting his licence, or being suspended from acting as a pilot, by and at the discretion of the corporation or other authority from which such pilot's licence was derived, either for the first, second or any subsequent offence.

has been registered, nor without producing it.

Penalty.

67. And be it further enacted, That every pilot licensed or to be licensed as aforesaid shall, at all times when thereunto required, produce or deliver and yield up his licence to the corporation or other authority by which the same was granted; and that on the death of any such pilot, his executors or administrators, or one of them, or the person or persons to whose hands the licence of such deceased pilot shall come, shall, without wilful delay, transmit such licence to the corporation or other authority by which the same was granted, on pain of such pilot, executor, administrator or other person forfeiting for any neglect therein a sum not exceeding twenty pounds nor less than forty shillings.

Licences to be delivered up when required, and on death of a pilot his licence shall be returned to the corporation or authority that granted it.

Penalty.

68. *Enacts that pilots keeping public houses, &c. (unless authorized), or offending against the revenue laws, &c., shall forfeit their licences or be suspended.*

69. And be it further enacted, That if any person suspended or adjudged to have forfeited his licence as a pilot shall, during the time of such suspension, or after such adjudication, take upon himself to conduct any ship or vessel as a pilot, such person shall be liable to all such penalties, to be recovered and applied in like manner and form, as are provided by this act against any person who shall pilot or conduct any ship or vessel without ever having been licensed as a pilot.

Pilots suspended or adjudged to have forfeited their licences liable to a penalty for acting.

70. And be it further enacted, That it shall be lawful for any licensed pilot, within the limits of his licence and the extent of his qualification therein expressed, to supersede in the charge of any ship or vessel any person not licensed to act as a pilot, or not licensed so to act within such limits, or acting beyond the extent of his qualification; and every person assuming or continuing in the charge or conduct of any ship or vessel, without being a duly licensed pilot, or without being duly licensed to act as a pilot within the limits of which such ship or vessel shall actually be, or beyond the extent of his qualification as expressed in his licence, after any pilot, duly licensed and qualified to act in the premises, shall have offered to take charge of such ship or vessel, shall forfeit for every such offence a sum not exceeding fifty pounds nor less than twenty pounds.

Licensed pilots may supersede unlicensed ones.

Penalty on unlicensed persons acting as pilots after a proper pilot shall have offered to take charge of the ship.

71. Provided always, and be it further enacted, That, for and notwithstanding anything in this act contained, any person whatsoever shall and may lawfully, and without being subject to any penalty by this act imposed, assume or continue in the charge or conduct of any ship or vessel as a pilot, where and so long as a pilot duly licensed and qualified shall not have offered to take the charge of such ship or vessel, or made a signal for that purpose, or where and so long as such ship or vessel shall be in distress, or under circumstances which shall have rendered it necessary for

When unlicensed persons, &c., may act as pilots.

the master of such ship or vessel to avail himself of the best assistance which at the time could be procured.

Penalty on pilots who shall decline to go off to or take charge of vessels, or who shall quit the same.

72. And be it further enacted, That every pilot licensed or to be licensed as aforesaid, who shall, when not actually engaged in his capacity of pilot, refuse or decline or wilfully delay to go off to or on board of or to take charge of any ship or vessel wanting a pilot, and within the limits specified in his licence, and of which he shall be qualified to take charge, upon the usual signal for a pilot being displayed from such ship or vessel, or upon being required so to do by the captain or by any commissioned or warrant officer of or belonging to such ship or vessel (if the same shall be in his Majesty's service), or by the master or other person having the command of such ship or vessel, or by any person or persons interested therein as principal or agent (if the same shall not be in his Majesty's service), or upon being required so to do in either of the cases aforesaid by any officer of the corporation or society to which such pilot shall belong, or by any principal officer of his Majesty's Customs (unless in any of the cases aforesaid it shall be unsafe for such pilot to obey such signal or comply with such requisition, or he shall be prevented from so doing by illness or other sufficient cause to be shown by him in that behalf), and every pilot licensed or to be licensed as aforesaid who shall on any frivolous pretext quit any ship or vessel, or decline the piloting thereof, after he has been engaged to pilot the same, or after going alongside thereof, before the service shall have been performed for which he was hired, and without leave of the captain of such ship or vessel (if in his Majesty's service), or of the master or other person having the command of such ship or vessel (if not in his Majesty's service), shall forfeit for every such offence any sum not exceeding one hundred pounds nor less than ten pounds, and shall be liable to be dismissed from being a pilot, or suspended from acting as such, at the discretion of the corporation or other authority by whom such pilot was licensed.

Penalty on pilots for employing or requiring the employment of any boat, &c., beyond what is necessary, thereby to increase expense.

73. And be it further enacted, That in case any pilot, licensed or to be licensed as aforesaid, shall employ or make use of, or shall compel or require any person having the command or charge of any ship or vessel to employ or make use of any boat, anchor, cable, hawser or any other matter or thing in or for the service or pretended service of such ship or vessel, beyond what shall actually and *bonâ fide* be necessary and proper for the use thereof, with intent thereby to enhance or increase the charge or expense of pilotage or pilot assistance of such ship or vessel, whether for the gain and emolument of such pilot, or for the gain or emolument of any other person or persons whomsoever, then and in every such case the person so offending shall forfeit and pay a sum not exceeding fifty pounds nor less than ten pounds, and shall also be liable to be deprived of his licence, or suspended from acting as a pilot, at the discretion of the corporation or other authority by whom he was licensed.

Penalty for lending licence and for drunkenness, and for conducting any vessel into danger, or injuring the same, or obtaining charge thereof by misrepresentation.

74. And be it further enacted, That in case any pilot licensed or to be licensed as aforesaid shall lend his licence to any unlicensed person to assist him in acting or claiming to act as a licensed pilot, or in case any such licensed pilot, or any person not being a pilot, but acting under pretext or colour of being a pilot, shall by drunkenness render himself incapable of conducting any ship or vessel, or shall wilfully or negligently run any ship or vessel on shore, or lose or injure the same, or the tackle or furniture thereof, or shall wilfully and knowingly conduct, lead, decoy or betray any ship or vessel into danger in any manner not already provided against by any statute or statutes, or shall unnecessarily or improperly cut any cable or cables of or belonging to any ship or vessel, or cause or procure the same to be cut unnecessarily and improperly, or if any such person shall by wilful misrepresentation of any circumstances upon which

the safety of any ship or vessel shall appear materially to depend for the time being obtain or endeavour to obtain the charge and conduct of any such ship or vessel, then and in every such case the person so offending, or who shall aid in, procure, abet or connive at the committing of any such offence or offences, shall, besides being liable to damages at the suit of the party grieved, forfeit and pay a sum not exceeding one hundred pounds nor less than twenty pounds, and if the person so offending shall be a pilot he shall also be liable to be deprived of his licence, or suspended from acting as a pilot, at the discretion of the corporation or other authority by whom his licence was granted.

75. And whereas the dock master or dock masters appointed by divers dock companies in the port of London, under and by virtue of divers acts of Parliament, have power and authority to direct the mooring and unmooring, moving or removing of ships and other vessels, within certain distances from the entrances out of the river Thames into the docks of such companies respectively: Be it therefore enacted, That from and after the passing of this act, if any pilot having the charge or direction of any ship or vessel within such distances from the respective entrances into the said docks respectively from the river Thames, and either intended to go into or having recently come out of the docks of the said companies respectively, shall neglect or refuse to obey such orders or directions as shall or may from time to time be given to such pilot by the said dock master or dock masters respectively, under and by virtue of and agreeably to the powers vested in him and them by any act or acts of Parliament touching or relating to the mooring, unmooring, moving or removing of such ships or vessels so being under the charge or direction of such pilot as aforesaid, then and in every such case every pilot so offending shall forfeit and pay a sum not exceeding fifty pounds nor less than twenty pounds, and every such pilot shall be liable to be dismissed from being a pilot or suspended from acting as such, at the discretion of the corporation or other authority by whom such pilot was licensed.

Penalty on pilots for not obeying the orders of dock masters.

76. *Enacts that penalties above 20l. may be recovered in the superior Courts of common law by actions commenced within twelve months after the offence.*

77. *Penalties not exceeding 20l. may be recovered within six months of the offence before justices of the peace.*

78. *Empowers justices of any county into which an offender may escape to indorse the original warrant, and to authorize the peace officers to execute it.*

79. *Witnesses not appearing may be committed to the house of correction.*

80. *Enacts that persons giving false testimony in any examination on oath under the act shall be guilty of perjury.*

81. *Provides a form of conviction.*

82. *Directs that an appeal may be made to the quarter sessions, who may finally determine the matter and award costs, and that the proceedings are not to be quashed for want of form, or removed by certiorari.*

83. *Provides for the application of penalties.*

84. *Provides for the limitation of actions, pleading the general issue and costs.*

APFDX.

85. *Regulations in any act relating to pilotage in any river, &c., and which refer to the repealed statutes, to continue in force notwithstanding such repeal.*

86. *Act not to compel ships belonging to his Majesty to take pilots.*

87. *Act not to affect the jurisdiction of the Court of Loadmanage, or of the High Court of Admiralty.*

88. *Provides that the act shall not prejudice any right of the city of London.*

Act not to affect
any districts
having separate
jurisdictions.

89. And be it further enacted, That nothing in this act contained shall extend or be construed to extend to the taking away, abridging, defeating, impeaching or interrupting of any grants, liberties, franchises or privileges heretofore granted by any charters or acts of Parliament to the pilots of the Trinity House of the town of Kingston-upon-Hull, or the Trinity House of Newcastle-upon-Tyne, or to give any authority to the corporation of the Trinity House of Deptford Strond, within any ports or districts having separate jurisdictions in matters of pilotage, under any act of Parliament or charter, or to alter or repeal any provisions contained in any act or acts of Parliament relating to the pilots of any ports or districts in relation to which particular provision shall have been made in any act or acts of Parliament as to the pilots or pilotage, or to the pilotage within the limits prescribed by any act or acts of Parliament relating to pilotage for such ports, or to the burden of vessels navigating to or from such ports.

90. *Provisions of former acts for preservation of sea marks and beacons to extend to all vessels appointed to exhibit lights, &c.*

91. *Penalty for riding by, &c., such vessels, or any buoy or beacon.*

92. *Act to be a public act.*

93. *Act may be altered or repealed this session.*

SCHEDULE (A.) contains tables of the rates of pilotage to be received by the Trinity House and Cinque Port pilots respectively.

SCHEDULE (B.) contains form of oath to be taken by the master and wardens of the Society of Cinque Port pilots.

SCHEDULE (C.) contains form of oath to be taken by sub-commissioners for pilotage.



7 & 8 VICT. c. 21.

An Act to reduce the Stamp Duties on Policies of Sea Insurance and on certain other Instruments, and to repeal the Duties on certain Bonds, and the Law requiring Public Notaries in Ireland to deliver Accounts of Bills and Notes noted by them.

[6th June, 1844.]

1. *This section repeals the provisions of the 55 Geo. 3, c. 184, the 3 & 4 Will. 4, c. 23, and the 5 & 6 Vict. c. 82, as to the policies of insurance and other instruments mentioned in the schedule to the act.*

2. Imposes the duties mentioned in the schedule, which, so far as it relates to contracts of insurance, is as follows:

The SCHEDULE to which this act refers; containing the duties imposed by this act.

For and in respect of every policy of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance shall be made upon any ship or vessel, or upon any goods, merchandize or other property on board of any ship or vessel, or upon the freight of any ship or vessel, or upon any other interest in or relating to any ship or vessel which may lawfully be insured for or upon any voyage whatever, the following duties, where the whole sum insured does not exceed one hundred pounds, and where the whole sum insured shall exceed one hundred pounds, then for every one hundred pounds, and also for every fractional part of one hundred pounds, whereof the same shall consist; (that is to say,)

	£	s.	d.
Where the premium or consideration for such insurance actually and bona fide paid, given or contracted for shall not exceed the rate of 10s. per cent. on the sum insured	0	0	3
And where the same shall exceed the rate of 10s. per cent., and shall not exceed the rate of 20s. per cent. on the sum insured	0	0	6
And where the same shall exceed the rate of 20s. per cent., and shall not exceed the rate of 30s. per cent. on the sum insured	0	1	0
And where the same shall exceed the rate of 30s. per cent., and shall not exceed the rate of 40s. per cent. on the sum insured	0	2	0
And where the same shall exceed the rate of 40s. per cent., and shall not exceed the rate of 50s. per cent. on the sum insured	0	3	0
And where the same shall exceed the rate of 50s. per cent. on the sum insured	0	4	0
But if the separate interests of two or more distinct persons shall be insured by one policy or instrument, then the said respective duties, as the case may require, shall be charged thereon in respect of each and every fractional part of 100 <i>l.</i> , which shall be thereby insured upon any separate and distinct interest (a). And for and in respect of every policy of assurance or insurance, or other instrument whereby any such insurance as aforesaid shall be made for any certain term or period of time, the following rates or sums for every 100 <i>l.</i> , and also for any fractional part of 100 <i>l.</i> , whereof the same shall consist; (that is to say,)			

Where any such insurance shall be made for any term or period not exceeding six calendar months	0	2	6
Exceeding six calendar months	0	4	0

And for and in respect of every policy of assurance or insurance, or other instrument, by whatever name the same shall be called, whereby any insurance, commonly called a mutual insurance, shall be made, or whereby divers persons shall insure or agree to insure one another, without any premium or pecuniary consideration, from any loss, damage or misfortune that may happen of or to any ship or vessel, or any goods, merchandize or other property on board of any ship or vessel, or the freight of any ship or vessel, or any other interest in or relating to any ship or vessel which may lawfully be insured upon any voyage whatever, and not for any period of time.

For every sum of 100 <i>l.</i> , and also for each and every fractional part of 100 <i>l.</i> thereby insured to any persons	0	2	6
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(a) See *Rapp v. Allnut*, 15 East, 601.

14 & 15 VICT. c. 102.

An Act to amend the Acts relating to the Merchant Seamen's Fund, and to provide for winding up the said Fund, and for the better Management thereof in the meantime. [8th August, 1851.]

The earlier sections of this act provide for the management of the Merchant Seamen's Fund.

Shipping masters appointed under the Mercantile Marine Act, 1850, ss. 25, 42, 43, to act as receivers.

8. At each port the shipping masters appointed under the Mercantile Marine Act, 1850, or such of the said shipping masters, if more than one, as the Board of Trade directs, shall be the receivers of such contributions to the fund from masters and seamen as may be payable under the provisions hereinafter contained; and in the case of shipping masters appointed by a local marine board constituted under the said last-mentioned act, such board may, with the sanction of the Board of Trade, and in other cases the Board of Trade may appoint any clerks or servants to assist the shipping masters in the discharge of their duties as receivers; and the Board of Trade may sanction such remuneration (if any) as it may deem necessary for the discharge of such duties.

Sources and Collection of Fund.

Sections 9 to 19 provide for the collection of the Merchant Seamen's Fund, and for the appointment of officers to administer it.

No compulsory contributions in future.

20. After the passing of this act no master or seaman shall be compelled to pay any duty or contribution to the fund; but any duties which have become due to the fund, and have been deducted from wages before the passing of this act, shall be paid to the Board of Trade, or in such manner as it directs; and any master or owner who neglects or refuses to make such payment shall, in addition to such payment, be liable to a penalty of twice the amount which he so neglects or refuses to pay.

No one who has not contributed to be allowed to contribute.

21. No master or seaman who has not contributed to the fund before the passing of this act shall be allowed to contribute thereto, or to establish any claim for a pension or other relief for himself or for his wife or children.

Those who have contributed to be allowed to continue.

22. All masters and seamen who before the passing of this act have contributed to the fund shall be allowed to continue to contribute in manner hereinafter mentioned, and shall in respect of their contributions be entitled to relief in the manner and subject to the conditions hereinafter mentioned.

Time of commencement of new system of contributions.

23. The Board of Trade shall fix the time at which the contributions to be made after the passing of this act are to commence, and shall give not less than one month's notice thereof by advertising the same in the *London Gazette*; but such time shall not be later than the first day of January, one thousand eight hundred and fifty-two.

Rate and mode of voluntary contribution for men discharged before a shipping master according to 13 & 14 Vict. c. 93, s. 96.

24. In the case of masters who discharge their crews before a shipping master under the provisions of the Mercantile Marine Act, 1850, and of seamen who are so discharged, such voluntary contributions shall be as follows; (that is to say,) every master shall pay two shillings and every seaman one shilling for each calendar month of service, and the same respective sums for any further number of days of service exceeding twenty, and one-half of such respective sums for any further number of days of service exceeding ten and not exceeding twenty, and one-third of such respective sums for any further number of days not exceeding ten (such further numbers of days to be reckoned as one month, one-half month, and one-third of a month respectively); and such service shall in the case of masters and seamen respectively be reckoned from the day of their respectively signing the agreement to the day of their discharge inclusive; and

such voluntary contributions shall be paid to such shipping master as aforesaid at the time of the discharge.

25. In the case of masters and seamen who do not attend before a shipping master for the purpose of discharge, such voluntary contributions as aforesaid shall be paid after the rate and in the manner following; (that is to say,) sixteen shillings shall be deemed to be the yearly contribution for a master and eight shillings the yearly contribution for a seaman, and so in proportion for any shorter period, and such sums shall be deemed to be payable quarterly in advance; and each master and seaman who wishes to contribute shall from time to time attend before some shipping master at stated periods to be appointed for the purpose by the Board of Trade, and shall then pay to him such proportions of his yearly contribution as he may think fit, so nevertheless that each such payment made at one time be either two shillings or some multiple of two shillings.

Rate and mode of voluntary contribution for men not discharged before a shipping master.

26. In the case of seamen who enter the royal navy and who desire to continue their contributions to the fund, such contributions shall be according to the rate hereinbefore fixed for the case of seamen who are not discharged before a shipping master, and shall be paid in such manner as the Board of Trade directs.

Provision for the case of men entering the navy.

Sections 27, 28, 36, 51 and 56 of this act were repealed by 16 & 17 Vict. c. 131, s. 25.

Sections 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 61, were repealed by the Merchant Shipping Repeal Act, 1854. The later sections of this act provided for the distribution and management of the Merchant Seamen's Fund.

* * * *The following Act, with the exception of sects. 3, 4, 5, 8, 10, 11, 12 and 13, and so much of sect. 9 as relates to the recovery of Pilotage Rates by Cinque Port pilots licensed before the Act came into operation, has been repealed by the Merchant Shipping Repeal Act, 1854; the repealed sections are therefore omitted.*

16 & 17 VICT. c. 129.

An Act further to amend the Law relating to Pilotage.

[20th August, 1853.]

WHEREAS it is expedient that the right of piloting ships outwards from the port of London, and the right of piloting ships inwards to the same port, should be vested in one body of pilots, and that such pilots should be subject to uniform authority and control; be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. *Repealed so much of 6 Geo. 4, c. 125, as relates to Cinque Port pilots, and of the whole of 9 Geo. 4, c. 86.*

Union of Trinity House and Cinque Port Pilots.

2. *Enabling the Trinity House to license pilots for the passage from Dungeness inwards as well as outwards.*

3. All Cinque Port pilots duly licensed and authorized before this act comes into operation to pilot any vessels from Dungeness or the Downs up the rivers Thames or Medway shall, notwithstanding the repeal and enactment hereinbefore contained, be authorized to pilot the like vessels within

Present Cinque Port pilots to be competent to pilot vessels either inwards or outwards

within the limits
for which they
are now licensed.

the same limits and in the same manner within and in which they might have lawfully piloted the same before the passing of this act according to the terms of their existing licences, and shall also by virtue of such existing licences (without any licence from the Trinity House in that behalf) be authorized to pilot the like vessels down the said rivers Thames and Medway, or from those rivers to the Downs or Dungeness, or from the west end of the Owers to the south buoy of the Brake, within the limits within which such existing licences authorize them to act in piloting such vessels from the Downs to the said rivers, and up the same, or from the south buoy of the Brake to the west end of the Owers; and it shall be lawful for the Trinity House by a supplemental licence to authorize any such Cinque Port pilot to pilot any vessels in any parts of the rivers Thames and Medway, or in any of the seas or channels leading to or from such rivers to which his existing licence may not extend, after examination in respect of the further limits within which he is to be so licensed to act, and upon the payment of such fee, if any, as the said Trinity House may, with the consent of the Board of Trade, appoint for the purpose; and such supplemental licence shall be taken to be part of and to be held upon the same conditions and subject to the same regulations in all respects as such existing licence.

The above-men-
tioned Cinque
Port pilots to be
subject to the
same rules, &c.
as Trinity House
pilots.

4. The said Cinque Port pilots who have been so licensed as aforesaid before this act comes into operation shall be subject to all the provisions of the said act of the sixth year of King George the Fourth, chapter one hundred and twenty-five, and of any other act now in force, which relate to pilots licensed by the Trinity House, (except such of them as are contained in the fourth section of the said act of the sixth year of King George the Fourth,) and shall likewise be subject to the government and regulations of the Trinity House, and to all bye-laws, rules, orders or ordinances duly issued by it for the purpose of insuring the good conduct and constant attendance of pilots upon their duty, and to such penalties as may be duly annexed to the breach of the said regulations, bye-laws, rules, orders or ordinances, in the same manner and to the same extent in and to which pilots licensed by the said Trinity House are subject thereto.

Present Trinity
House pilots may
pilot ships in-
wards within the
limits of their
licences.

5. All pilots licensed before this act comes into operation by the said Trinity House to pilot any vessels upon the rivers Thames and Medway, or from London Bridge to the Downs, or from the Isle of Wight to London Bridge, shall be authorized to pilot the like vessels from or by Dungeness up the rivers Thames and Medway, and from the south buoy of the Brake to the westward to the end of the Owers, or within such or so much of the same limits as under their present licences they might act within in piloting such vessels down the said rivers or outwards or to the westward: Provided always, that nothing herein contained shall be deemed to confer any privilege of piloting above Gravesend and Stangate Creek respectively upon any pilots by whatever authority they may be licensed, except with the concurrence of the Trinity House in the case of each pilot.

6. *Enabling the Trinity House to make regulations for a constant supply of pilots at Dungeness.*

7. *Directing that vessels coming past Dungeness, not having a pilot already on board, should take the first qualified pilot who offered.*

Rates to be de-
manded for
duties hitherto
performed by
Cinque Port
pilots.

8. Until any such alteration as hereinafter provided for be made, the rates and prices to be demanded and received by all pilots performing the duties hitherto performed by Cinque Port pilots shall be such rates and prices as have immediately before this act comes into operation been lawfully demanded and received by such last-mentioned pilots; and it shall be lawful for the said Trinity House to increase, reduce, alter or modify all or

any of the said rates or prices, or to substitute other rates or prices in lieu thereof, with the same consent, in the same manner, and subject to the same conditions with, in and subject to which the Trinity House is empowered to increase, reduce, alter and modify the rates and prices to be demanded and received by pilots licensed by it, or to substitute other rates and prices in lieu of such last-mentioned rates and prices, but so that in no case shall any higher rate be imposed or demanded than might have been imposed or demanded if this act had not passed.

9. All rates and prices which may be lawfully demanded or received by the said Cinque Port pilots licensed before this act comes into operation, or by any other pilots licensed by or under the government of the Trinity House, shall be recoverable in the same manner in which rates and prices lawfully demanded or received by pilots licensed by the Trinity House under the said act of the sixth year of King George the Fourth are by that act made recoverable; and all rates or prices which may be lawfully demanded or received by any pilots under the government of the said Trinity House for the pilotage of foreign vessels, the owners, masters, agents or consignees, of which claim, by virtue of any treaty of reciprocity, to be entitled to the privileges of British vessels, shall be recoverable from the same persons, in the same manner, and subject to the same conditions from whom and in and subject to which pilotage rates on British vessels are recoverable under the forty-fourth and forty-fifth sections of the said act.

Existing Cinque Port pilots should have same remedies for the recovery of rates as Trinity House pilots.

Rates on foreign vessels claiming benefit of reciprocity treaties.

10. All property of every kind, whether real or personal, which may belong to or be held by the Court of Loadmanage or the said Society of Cinque Port Pilots, or any branch thereof, or any officer of the said society, or any other person as trustee for the said society, or any branch thereof, or which may be legally applicable for the benefit of the said society or of the members thereof, or for any purposes connected with pilotage (including a piece of land near Dover which was by indentures of lease and release, dated respectively the sixteenth and seventeenth days of August, one thousand seven hundred and twenty-six, conveyed to trustees therein named, upon certain trusts, for the poor of the Trinity House of Dover), shall, upon the passing of this act, belong to and become vested in the Trinity House of Deptford Strond; and the said Trinity House shall have power to sell the same or any part thereof as occasion may require, and to give full discharges for the purchase money of any part thereof which may be sold; and all monies which if this act had not passed would have been paid for any purpose connected with the relief or benefit of Cinque Port pilots, their appointees, widows or issue, either in respect of surplus duties on foreign vessels, or by way of fees or contributions from Cinque Port pilots licensed before this act comes into operation, and all sums which would if this act had not passed been payable by such pilots as Trinity money or clerks fees, and all penalties or fines payable by or in respect of such pilots, shall, save as such contributions, Trinity money or clerks fees may be varied or remitted under the regulations to be made and approved as hereinafter mentioned, and save also such of the said contributions as may cease by reason of any such purchases or commutations of claims as hereinafter provided for, be paid to the Trinity House, and the said property and monies shall be carried to and form part of the pilotage funds of the Trinity House.

Property of Society of Cinque Port Pilots to be transferred to Trinity House.

Payments to Cinque Port Pilots Fund to be made henceforth to the Trinity House.

11. The said Trinity House shall, out of their said pilotage fund, pay all debts, if any, lawfully and properly incurred by the said Court of Loadmanage before this act comes into operation, and also such compensation or superannuation allowances (if any) as the Board of Trade may in its discretion allow to any persons now in the employ or service of the Court of Loadmanage, or of the Lord Warden of the Cinque Ports, or of the Society of Cinque Port Pilots, who may be deprived of salaries or emoluments by reason of the passing of this act, so that no such compensation or

Trinity House to pay debts and to settle the claims of persons now in receipt of relief, and of existing Cinque Port pilots.

superannuation allowance shall exceed the proportion of salary or emoluments which might be granted under similar circumstances to a person in the public civil service under the act of the fourth and fifth years of King William the Fourth, chapter twenty-four; and may in the next place, subject to the regulations to be made and approved as hereinafter mentioned, either purchase out of the said funds the claims of all or any of the persons who, but for the passing of this act, would have been in the receipt of pensions or other relief, either out of the said Cinque Port Pilots Fund, or under any bye-laws of the said society now in force, or who have already paid widows dues, or have otherwise contributed to the relief of superannuated Cinque Port pilots, or of the widows, appointees or issue of Cinque Port pilots, such purchases to be made upon such terms as may be determined by the said regulations, or may, subject as aforesaid, continue to pay out of the said funds pensions or other relief to all or any of the persons who might if this act had not passed have received the same out of the said funds, or under any bye-laws of the said society now in force, such pensions or other relief to be of such amount as may be determined by the said regulations to be made and approved as hereinafter mentioned; and the Trinity House may, subject to such regulations, make arrangements for enabling any person who, but for the passing of this act, would be entitled to a pension or other relief under the bye-laws of the said Society of Cinque Port Pilots now in force, or any Cinque Port pilot licensed before this act comes into operation, to purchase an interest in the said Trinity House Pilots Fund; and the terms of such purchase, including the amount and nature of such interest, and the consideration payable for the same, shall be determined by such regulations as aforesaid; and every Cinque Port pilot who chooses to make such purchase shall thereafter pay to the said Trinity House the same contributions, whether by way of poundage or otherwise, as are for the time being payable by pilots licensed by the Trinity House.

Trinity House may enable existing Cinque Port pilots to purchase an interest in the Trinity House Pilots Fund.

As to charges on Trinity House Pilotage Fund, and its future management.

12. The said Trinity House shall also out of their said pilotage funds pay all such superannuation allowances or other relief to pilots licensed by them before this act comes into operation, or to the widows and children of such pilots, as might have been payable by the said Trinity House if this act had not passed; and, subject to the charges aforesaid, the said Trinity House Pilots Fund shall be chargeable in the first instance with such expenses as the said Trinity House may duly incur in the performance of its duties in respect of pilots and pilotage, so nevertheless that no superannuation allowance to any person in the employ of the said Trinity House which is included in such expenses shall exceed the proportion of his salary which might be granted under similar circumstances to a person in the public civil service, under the act of the fourth and fifth years of King William the Fourth, chapter twenty-four, or under any other act for regulating such superannuation allowances for the time being in force; and, subject thereto, the said Trinity House Pilots Fund shall be administered by the said Trinity House for the benefit of such pilots licensed by the said Trinity House after this act comes into operation as are incapacitated for the performance of their duty by reason of age, infirmity or accident, and of the widows and children of pilots so licensed, or of such incapacitated pilots only, upon such conditions and under such regulations as the said Trinity House, with the consent of the Board of Trade, may think fit to adopt; and if it appears to the said Trinity House that the contributions for the time being payable to the said Trinity House Pilots Fund are insufficient to enable them to grant allowances of proper and adequate amount, it shall be lawful for the said Trinity House, with such consent and subject to such regulations as aforesaid, from time to time to increase and alter the amount of the annual contribution, or of the poundage upon the sums earned by pilots, which under the fourth section of the said act of the sixth year of the reign of King George the Fourth, chapter one hundred

and twenty-five, pilots licensed by the said Trinity House are required to pay to the said pilotage fund.

13. And whereas it is intended that Cinque Port pilots licensed before this act comes into operation, their widows and appointees, shall, as a body, receive, under the provisions hereinbefore contained, benefits equal in amount to the benefits which they might lawfully and properly have received out of the several funds and payments so transferred to the Trinity House as aforesaid if this act had not passed: And whereas it has been estimated that the funds and payments so transferred, including the principal as well as the interest of the said funds, would, if duly applied, be sufficient to carry the said intention into effect; but in consequence of the numerous contingencies involved it is impossible to calculate with certainty the amount which will be necessary for that purpose, or to determine with precision the manner in which such amount shall be applied, and it is therefore expedient that all due claims of the said Cinque Port pilots, their widows, appointees and issue, should be provided for by the said Trinity House out of their general pilotage funds as hereinbefore provided, and that the Board of Trade and the Trinity House should be intrusted with such powers as are necessary for settling the said claims, and for carrying into effect the provisions hereinbefore contained in respect thereof: be it enacted, That for the purpose of carrying the said intention and provisions into effect, the said Trinity House may, with the approval of the Board of Trade, from time to time make regulations for altering and determining the payments and contributions to be made by Cinque Port pilots licensed before this act comes into operation, and for settling, purchasing and commuting the claims of persons now in receipt of relief from the said Cinque Port Pilots Fund, and of the said Cinque Port pilots licensed before this act comes into operation, their widows, appointees and issue, and for determining the terms and conditions on which such settlement is to be made; and in framing such regulations due regard shall be had to the intention hereinbefore expressed; and the said Trinity House may also, with such consent as aforesaid, from time to time make regulations for the future management of the Trinity House Pilots Fund, and also for the management and maintenance of any pilot boats or cutters belonging to the said Cinque Port pilots, or to any pilots for the time being under the government of the said Trinity House, and for the distribution of the earnings (if any) of such boats or cutters, and for the succession to, purchase of or transfer of any interests therein; and all such regulations, after being approved of by the Board of Trade, shall be binding upon all parties.

Recital of principles upon which claims of Cinque Port pilots are to be settled.

Trinity House, with consent of Board of Trade, may make regulations for settling the above claims.

17 VICT. c. 5.

An Act to admit Foreign Ships to the Coasting Trade. [23rd March, 1854.]

WHEREAS by the one hundred and fifty-second section of the Customs Consolidation Act, 1853, it is enacted, That no goods or passengers shall be carried coastwise from one part of the United Kingdom to another except in British ships: And whereas by the one hundred and ninety-first section of the same act it is enacted, That no goods or passengers shall be imported into the United Kingdom from the Channel Islands or exported from the United Kingdom to the said islands, or carried from one of the said islands to another, or from one part of any of the said islands to another part thereof, except in British ships: And whereas it is expedient to remove the restrictions contained in the said recited enactments: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of

Recital of 16 & 17 Vict. c. 107, ss. 152 and 191.

the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Repeal of the recited enactments.

The Queen enabled to exercise retaliatory powers as in 16 & 17 Vict. c. 107, ss. 324, 325 and 326.

1. The enactments hereinbefore recited, that is to say, the one hundred and fifty-second and the one hundred and ninety-first sections of the said Customs Consolidation Act, 1853, shall be repealed from the passing of this act : Provided, that it shall be lawful for her Majesty to exercise, in respect of foreign ships employed in the coasting trade as aforesaid, and of goods carried coastwise in such ships, such or the like powers as are conferred on her Majesty by the three hundred and twenty-fourth, three hundred and twenty-fifth, and three hundred and twenty-sixth sections of the said Customs Consolidation Act, 1853, in respect of foreign ships employed in the overseas trade, and of goods exported or imported in such ships.

Foreign ships in the coasting trade to be subject to the same rules as British ships.

2. Every foreign ship which after the passing of this act is employed in carrying goods or passengers coastwise from one part of the United Kingdom to another, or from the islands of Guernsey, Jersey, Alderney, Sark or Man, to the United Kingdom, or from the United Kingdom to any of the said islands, or from any of the said islands to any other of them, or from any part of any one of the said islands to any other part of the same, shall be subject, as to stores for the use of the crew, and in all other respects, to the same laws, rules and regulations to which British ships when so employed are now subject.

Foreign ships employed in the coasting trade not to be subject to higher rates than British ships.

3. No foreign ship which after the passing of this act is employed in the coasting trade as aforesaid, nor any goods carried in any such ship, shall, during the time such ship is so employed, be subject to any higher or other rate of dock, pier, harbour, light, pilotage, tonnage or other dues, duties, tolls, rates or other charges whatsoever, or to any other rules as to the employment of pilots, or any other rules or restrictions whatsoever, than British ships employed in like manner, or goods carried in such ships, any law, charter, special privilege, or grant to the contrary notwithstanding ; nor shall any body corporate or person having or claiming any right or title to any such higher or other rates, dues, duties, tolls or other charges as aforesaid be entitled to any compensation in respect thereof under any law or statute relating thereto, or otherwise howsoever.

Foreign steam vessels carrying passengers coastwise to be subject to provisions of 14 & 15 Vict. c. 79.

4. And whereas it is expedient to provide for the safety of passenger steamers : be it enacted, that every foreign steam vessel carrying passengers from one place to another on the coast of the United Kingdom of Great Britain and Ireland and the Channel Islands shall be subject to the provisions of the Steam Navigation Act, 1851 (a).

17 & 18 VICT. c. 104.

An Act to amend and consolidate the Acts relating to Merchant Shipping. [10th August, 1854.]

WHEREAS it is expedient to amend and consolidate the acts relating to Merchant Shipping : be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

PRELIMINARY.

Short title of act.

1. This act may be cited for all purposes as "The Merchant Shipping Act, 1854."

(a) This section is repealed by the M. S. Repeal Act, 1854 (17 & 18 Vict. c. 120). See *post*.

2. In the construction and for the purposes of this act (if not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them ; (that is to say.)

Interpretation of
certain terms in
this act.

- " Her Majesty's Dominions," shall mean her Majesty's dominions strictly so called, and all territories under the government of the East India Company, and all other territories (if any) governed by any charter or licence from the Crown or Parliament of the United Kingdom :
- " The United Kingdom " shall mean Great Britain and Ireland :
- " British Possession " shall mean any colony, plantation, island, territory or settlement within her Majesty's dominions, and not within the " United Kingdom " :
- " The Treasury " shall mean the Commissioners of her Majesty's Treasury :
- " The Admiralty " shall mean the Lord High Admiral or the Commissioners for executing his office :
- " The Board of Trade " shall mean the Lords of the Committee of Privy Council appointed for the consideration of matters relating to trade and foreign plantations :
- " The Trinity House " shall mean the master, wardens and assistants of the guild, fraternity or brotherhood of the most glorious and undivided Trinity and of St. Clement in the parish of Deptford Strond, in the county of Kent, commonly called the Corporation of the Trinity House of Deptford Strond :
- " The Port of Dublin Corporation " shall mean the corporation for preserving and improving the port of Dublin :
- " Consular Officer " shall include consul-general, consul and vice-consul, and any person for the time being discharging the duties of consul-general, consul or vice-consul :
- " Receiver " shall mean any person appointed in pursuance of this act receiver of wreck :
- " Pilotage Authority " shall include all bodies and persons authorized to appoint or license pilots, or to fix or alter rates of pilotage, or to exercise any jurisdiction in respect of pilotage :
- " Pilot " shall mean any person not belonging to a ship who has the conduct thereof :
- " Qualified Pilot " shall mean any person duly licensed by any pilotage authority to conduct ships to which he does not belong :
- " Master " shall include every person (except a pilot) having command or charge of any ship :
- " Seaman " shall include every person (except masters, pilots and apprentices duly indentured and registered), employed or engaged in any capacity on board any ship :
- " Salvor " shall, in the case of salvage services rendered by the officers or crew or part of the crew of any ship belonging to her Majesty, mean the person in command of such ship :
- " Person " shall include body corporate :
- " Ship " shall include every description of vessel used in navigation not propelled by oars :
- " Foreign-going Ship " shall include every ship employed in trading or going between some place or places in the United Kingdom, and some place or places situate beyond the following limits ; that is to say, the coasts of the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney and Man, and the continent of Europe between the river Elbe and Brest inclusive :
- " Home-trade Ship " shall include every ship employed in trading or going within the following limits ; that is to say, the United Kingdom, the islands of Guernsey, Jersey, Sark, Alderney and Man, and the continent of Europe between the river Elbe and Brest inclusive :
- " Home-trade Passenger Ship " shall mean every home-trade ship employed in carrying passengers :
- " Lighthouses " shall, in addition to the ordinary meaning of the word,

include floating and other lights exhibited for the guidance of ships, and "buoys and beacons" shall include all other marks and signs of the sea:

"Wreck" shall include jetsam, flotsam, lagan and derelict found in or on the shores of the sea or any tidal water.

Commencement of act.

3. This act shall come into operation on the first day of May, one thousand eight hundred and fifty-five.

Exemption of her Majesty's ships.

4. This act shall not, except as hereinafter specially provided, apply to ships belonging to her Majesty.

Division of act.

5. This act shall be divided into eleven parts:

The first part relating to the Board of Trade: its general functions:

The second part to British ships: their ownership, measurement, and registry:

The third part to masters and seamen:

The fourth part to safety and prevention of accidents:

The fifth part to pilotage:

The sixth part to lighthouses:

The seventh part to the Mercantile Marine Fund:

The eighth part to wrecks, casualties and salvage:

The ninth part to liability of shipowners:

The tenth part to legal procedure:

The eleventh part to miscellaneous matters.

PART I.

THE BOARD OF TRADE: ITS GENERAL FUNCTIONS.

Functions of Board of Trade.

Board of Trade to be department to superintend merchant shipping.

6. The Board of Trade shall be the department to undertake the general superintendence of matters relating to merchant ships and seamen, and shall be authorized to carry into execution the provisions of this act, and of all other acts relating to merchant ships and seamen in force for the time being, other than such acts as relate to the revenue.

Certificates and documents purporting to be sealed or signed in a given manner to be received in evidence.

7. All documents whatever purporting to be issued or written by or under the direction of the Board of Trade, and purporting either to be sealed with the seal of such Board, or to be signed by one of the secretaries or assistant secretaries to such Board, shall be received in evidence, and shall be deemed to be issued or written by or under the direction of the said Board, without further proof, unless the contrary be shown; and all documents purporting to be certificates issued by the Board of Trade in pursuance of this act, and to be sealed with the seal of such Board, or to be signed by one of the officers of the marine department of such Board, shall be received in evidence, and shall be deemed to be such certificates, without further proof, unless the contrary be shown.

Board of Trade to issue forms of instruments.

8. The Board of Trade may from time to time prepare and sanction forms of the various books, instruments and papers required by this act other than those required by the second part thereof, and may from time to time make such alterations therein as it deems requisite; and shall, before finally issuing or altering any such form, give such public notice thereof as it deems necessary in order to prevent inconvenience; and shall cause every such form to be sealed with such seal as aforesaid, or marked with some other distinguishing mark, and to be supplied at the custom houses and shipping offices of the United Kingdom free of charge, or at such moderate prices as it may from time to time fix, or may license any person to print and sell the same; and every such book, instrument and paper as aforesaid shall be made in the form issued by the Board of Trade; and

sanctioned by it as the proper form for the time being; and no such book, instrument or paper as aforesaid, unless made in such form, shall be admissible in evidence in any civil proceeding on the part of any owner or master of any ship; and every such book, instrument or paper, if made in a form purporting to be a proper form, and to be sealed or marked as aforesaid, shall be taken to be made in the form hereby required, unless the contrary is proved.

9. All instruments used in carrying into effect the second part of this act, if not already exempted from stamp duty, and all instruments which by the third, fourth, sixth or seventh parts of this act are required to be made in forms sanctioned by the Board of Trade, if made in such forms, and all instruments used by or under the direction of the Board of Trade in carrying such parts of this act into effect, shall be exempt from stamp duty.

Certain forms and instruments to be exempt from stamp duty.

10. Every person who forges, assists in forging, or procures to be forged, such seal or other distinguishing mark as aforesaid, or who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any form issued by the Board of Trade, with the view of evading any of the provisions of this act or any condition contained in such form, shall for each offence be deemed guilty of a misdemeanor; and every person who, in any case in which a form sanctioned by the Board of Trade is, by the third part of this act required to be used, uses without reasonable excuse any form not purporting to be so sanctioned, or who prints, sells or uses any document purporting to be a form so sanctioned, knowing the same not to be so sanctioned for the time being or not to have been prepared and issued by the Board of Trade, shall for each such offence incur a penalty not exceeding ten pounds.

Penalties for forgery of seal and fraudulent alteration of forms, and for not using forms issued by Board of Trade.

11. Subject to the provisions hereinafter contained, all fees and payments (other than fines) coming to the hands of the Board of Trade under the third and fourth parts of this act, shall be carried to the account of the Mercantile Marine Fund hereinafter mentioned, and shall be dealt with as herein prescribed in that behalf; and all fines coming to the hands of the Board of Trade under this act shall be paid into the receipt of her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Application of monies and fines paid to Board of Trade.

12. All consular officers, and all officers of customs abroad, and all local marine boards and shipping masters, shall make and send to the Board of Trade such returns or reports on any matter relating to British merchant shipping or seamen as such Board requires; and all shipping masters shall, whenever required by the Board of Trade, produce to such Board or to its officers all official log-books and other documents which, in pursuance of this act, are delivered to them.

Returns to Board of Trade.

13. Every officer of the Board of Trade, and every commissioned officer of any of her Majesty's ships on full pay, and every British consular officer, and the registrar-general of seamen and his assistant, and every chief officer of customs in any place in her Majesty's dominions, and every shipping master, may, in cases where he has reason to suspect that the provisions of this act or the laws for the time being relating to merchant seamen and to navigation are not complied with, exercise the following powers; (that is to say,)

Officers of Board of Trade, naval officers, consuls, the registrar-general of seamen, officers of customs and shipping masters, may inspect documents and muster crews.

He may require the owner, master or any of the crew of any British ship to produce any official log-books or other documents relating to such crew or any member thereof in their respective possession or control:

He may require any such master to produce a list of all persons on board

his ship, and take copies of such official log-books, or documents, or of any part thereof :

He may muster the crew of any such ship :

He may summon the master to appear and give any explanation concerning such ship or her crew or the said official log-books or documents :

And if, upon requisition duly made by any person so authorized in that behalf as aforesaid, any person refuses or neglects to produce any such official log-book or document as he is hereinbefore required to produce, or to allow the same to be inspected or copied as aforesaid, or impedes any such muster of a crew as aforesaid, or refuses or neglects to give any explanation which he is hereinbefore required to give, or knowingly misleads or deceives any person hereinbefore authorized to demand any such explanation, he shall for each such offence incur a penalty not exceeding twenty pounds.

Board of Trade may appoint inspectors.

14. The Board of Trade may from time to time, whenever it seems expedient to them so to do, appoint any person, as an inspector, to report to them upon the following matters ; (that is to say,)

- (1.) Upon the nature and causes of any accident or damage which any ship has sustained or caused, or is alleged to have sustained or caused :
- (2.) Whether the provisions of this act, or any regulations made under or by virtue of this act, have been complied with :
- (3.) Whether the hull and machinery of any steam ship are sufficient and in good condition.

Powers of inspectors.

15. Every such inspector as aforesaid shall have the following powers ; (that is to say,)

- (1.) He may go on board any ship, and may inspect the same or any part thereof, or any of the machinery, boats, equipments or articles on board thereof to which the provisions of this act apply, not unnecessarily detaining or delaying her from proceeding on any voyage :
- (2.) He may enter and inspect any premises the entry or inspection of which appears to him to be requisite for the purpose of the report which he is directed to make :
- (3.) He may, by summons under his hand, require the attendance of all such persons as he thinks fit to call before him and examine for such purpose, and may require answers or returns to any inquiries he thinks fit to make :
- (4.) He may require and enforce the production of all books, papers or documents which he considers important for such purpose :
- (5.) He may administer oaths, or may, in lieu of requiring or administering an oath, require every person examined by him to make and subscribe a declaration of the truth of the statements made by him in his examination :

Witnesses to be allowed expenses ;

And every witness so summoned as aforesaid shall be allowed such expenses as would be allowed to any witness attending on subpoena to give evidence before any Court of Record, or if in Scotland, to any witness attending on citation the Court of Justiciary ; and in case of any dispute as to the amount of such expenses the same shall be referred by the inspector to one of the masters of her Majesty's Court of Queen's Bench in England or Ireland, or to the Queen's and Lord Treasurer's Remembrancer in Scotland, who, on a request made to him for that purpose under the hand of the said inspector, shall ascertain and certify the proper amount of such expenses ; and every person who refuses to attend as a witness before any such inspector, after having been required so to do in the manner hereby directed and after having had a tender made to him of the expenses (if any) to which he is entitled as aforesaid, or who refuses or neglects to make any

penalty for refusing to give evidence.

answer, or to give any return, or to produce any document in his possession, or to make or subscribe any declarations which any such inspector is hereby empowered to require, shall for each such offence incur a penalty not exceeding ten pounds.

16. Every person who wilfully impedes any such inspector appointed by the Board of Trade as aforesaid in the execution of his duty, whether on board any ship or elsewhere, shall incur a penalty not exceeding ten pounds, and may be seized and detained by such inspector or other person, or by any person or persons whom he may call to his assistance, until such offender can be conveniently taken before some justice of the peace or other officer having proper jurisdiction.

Penalty for obstructing inspectors in the execution of their duty.

PART II.

BRITISH SHIPS: THEIR OWNERSHIP, MEASUREMENT AND REGISTRY.

Application.

17. The second part of this act shall apply to the whole of her Majesty's dominions.

Application.

Application of Part II. of act.

Description and Ownership of British Ships.

18. No ship shall be deemed to be a British ship unless she belongs wholly to owners of the following description; (that is to say.)

Description and Ownership of British Ships.

Description and ownership of British ships.

(1.) Natural-born British subjects:

Provided that no natural-born subject who has taken the oath of allegiance to any foreign sovereign or state shall be entitled to be such owner as aforesaid, unless he has subsequently to taking such last-mentioned oath taken the oath of allegiance to her Majesty, and is and continues to be during the whole period of his so being an owner resident in some place within her Majesty's dominions, or if not so resident, member of a British factory, or partner in a house actually carrying on business in the United Kingdom or in some other place within her Majesty's dominions:

(2.) Persons made denizens by letters of denization, or naturalized by or pursuant to any act of the imperial legislature, or by or pursuant to any act or ordinance of the proper legislative authority in any British possession:

Provided that such persons are and continue to be during the whole period of their so being owners resident in some place within her Majesty's dominions, or if not so resident, members of a British factory, or partners in a house actually carrying on business in the United Kingdom or in some other place within her Majesty's dominions, and have taken the oath of allegiance to her Majesty subsequently to the period of their being so made denizens or naturalized:

(3.) Bodies corporate established under, subject to the laws of and having their principal place of business in the United Kingdom or some British possession.

19. Every British ship must be registered in manner hereinafter mentioned, except,

British ships with certain exceptions must be registered.

(1.) Ships duly registered before this act comes into operation:

(2.) Ships not exceeding fifteen tons burden employed solely in navigation on the rivers or coasts of the United Kingdom, or on the rivers or coasts of some British possession within which the managing owners of such ships are resident:

(3.) Ships not exceeding thirty tons burden, and not having a whole or fixed deck, and employed solely in fishing or trading coastwise on the shores of Newfoundland or parts adjacent thereto, or in the gulf

of St. Lawrence, or on such portion of the coasts of Canada, Nova Scotia or New Brunswick as lie bordering on such gulf:

And no ship hereby required to be registered shall, unless registered, be recognized as a British ship; and no officer of customs shall grant a clearance or transire to any ship hereby required to be registered for the purpose of enabling her to proceed to sea as a British ship, unless the master of such ship, upon being required so to do, produces to him such certificate of registry as is hereinafter mentioned; and if such ship attempts to proceed to sea as a British ship without a clearance or transire, such officer may detain such ship until such certificate is produced to him.

*Measurement of
Tonnage.*

Tonnage, deck,
feet, decimals.

Measurement of Tonnage.

20. Throughout the following rules the tonnage deck shall be taken to be the upper deck in ships which have less than three decks, and to be the second deck from below in all other ships; and in carrying such rules into effect all measurements shall be taken in feet and fractions of feet, and all fractions of feet shall be expressed in decimals.

RULE I.

For ships to be
registered, and
other ships of
which the hold is
clear.

Lengths.

21. The tonnage of every ship to be registered, with the exceptions mentioned in the next section, shall, previously to her being registered, be ascertained by the following rule, hereinafter called Rule I.; and the tonnage of every ship to which such rule can be applied, whether she is about to be registered or not, shall be ascertained by the same rule:

- (1.) Measure the length of the ship in a straight line along the upper side of the tonnage deck from the inside of the inner plank (average thickness) at the side of the stem to the inside of the midship stern timber or plank there, as the case may be (average thickness), deducting from this length what is due to the rake of the bow in the thickness of the deck, and what is due to the rake of the stern timber in the thickness of the deck, and also what is due to the rake of the stern timber in one-third of the round of the beam; divide the length so taken into the number of equal parts required by the following table, according to the class in such table to which the ship belongs:

Table.

- | | |
|----------|---|
| Class 1. | Ships of which the tonnage deck is according to the above measurement 50 feet long or under, into 4 equal parts: |
| " 2. | Ships of which the tonnage deck is according to the above measurement above 50 feet long and not exceeding 120, into 6 equal parts: |
| " 3. | Ships of which the tonnage deck is according to the above measurement above 120 feet long and not exceeding 180, into 8 equal parts: |
| " 4. | Ships of which the tonnage deck is according to the above measurement above 180 feet long and not exceeding 225, into 10 equal parts: |
| " 5. | Ships of which the tonnage deck is according to the above measurement above 225 feet long, into 12 equal parts. |

Transverse areas.

- (2.) Then, the hold being first sufficiently cleared to admit of the required depths and breadths being properly taken, find the transverse area of such ship at each point of division of the length as follows:—measure the depth at each point of division, from a point at a distance of one third of the round of the beam below such deck, or, in case of a break, below a line stretched in continuation thereof, to the upper side of the floor timber at the inside of the limber strake, after deducting the average thickness of the ceiling which is between the bilge planks and limber strake; then, if the depth at the midship division of the length do not exceed sixteen feet, divide each depth into four equal parts; then measure the inside horizontal breadth at each of the three points of division, and also at the upper and lower

points of the depth, extending each measurement to the average thickness of that part of the ceiling which is between the points of measurement; number these breadths from above (*i. e.* numbering the upper breadth one, and so on down to the lowest breadth); multiply the second and fourth by four, and the third by two; add these products together, and to the sum add the first breadth and the fifth; multiply the quantity thus obtained by one third of the common interval between the breadths, and the product shall be deemed the transverse area; but if the midship depth exceed sixteen feet, divide each depth into six equal parts instead of four, and measure as before directed the horizontal breadths at the five points of division, and also at the upper and lower points of the depth; number then from above as before; multiply the second, fourth and sixth by four, and the third and fifth by two; add these products together, and to the sum add the first breadth, and the seventh; multiply the quantity thus obtained by one third of the common interval between the breadths, and the product shall be deemed the transverse area.

- (3.) Having thus ascertained the transverse area at each point of division of the length of the ship as required by the above table, proceed to ascertain the register tonnage of the ship in the following manner:—Number the areas successively 1, 2, 3, &c., No. 1 being at the extreme limit of the length at the bow, and the last No. at the extreme limit of the length at the stern; then, whether the length be divided according to the table into four or twelve parts as in classes 1 and 5, or any intermediate number as in classes 2, 3 and 4, multiply the second and every even numbered area by four, and the third and every odd numbered area (except the first and last) by two; add these products together, and to the sum add the first and last if they yield anything; multiply the quantity thus obtained by one third of the common interval between the areas, and the product will be the cubical contents of the space under the tonnage deck; divide this product by one hundred, and the quotient being the tonnage under the tonnage deck shall be deemed to be the register tonnage of the ship, subject to the additions and deductions hereinafter mentioned.
- (4.) If there be a break, a poop, or any other permanent closed-in space on the upper deck, available for cargo or stores, or for the berthing or accommodation of passengers or crew, the tonnage of such space shall be ascertained as follows:—Measure the internal mean length of such space in feet, and divide it into two equal parts; measure at the middle of its height three inside breadths, namely, one at each end and the other at the middle of the length; then to the sum of the end breadths add four times the middle breadth, and multiply the whole sum by one third of the common interval between the breadths; the product will give the mean horizontal area of such space; then measure the mean height, and multiply by it the mean horizontal area; divide the product by one hundred, and the quotient shall be deemed to be the tonnage of such space, and shall be added to the tonnage under the tonnage deck, ascertained as aforesaid, subject to the following provisos; first, that nothing shall be added for a closed-in space solely appropriated to the berthing of the crew, unless such space exceeds one-twentieth of the remaining tonnage of the ship, and in case of such excess the excess only shall be added; and, secondly, that nothing shall be added in respect of any building erected for the shelter of deck passengers, and approved by the Board of Trade.
- (5.) If the ship has a third deck, commonly called a spar deck, the tonnage of the space between it and the tonnage deck shall be ascertained as follows:—Measure in feet the inside length of the space at the middle of its height from the plank at the side of the stem to the

Computation
from areas.

Poop and any
other closed-in
space.

In case of two or
more decks.

lining on the timbers at the stern, and divide the length into the same number of equal parts into which the length of the tonnage deck is divided as above directed; measure (also at the middle of its height) the inside breadth of the space at each of the points of division, also the breadth of the stem and the breadth at the stern; number them successively 1, 2, 3, &c., commencing at the stem; multiply the second and all the other even numbered breadths by four, and the third and all the other odd numbered breadths (except the first and last) by two; to the sum of these products add the first and last breadths; multiply the whole sum by one third of the common interval between the breadths, and the result will give in superficial feet the mean horizontal area of such space; measure the mean height of such space, and multiply by it the mean horizontal area, and the product will be the cubical contents of the space; divide this product by one hundred, and the quotient shall be deemed to be the tonnage of such space, and shall be added to the other tonnage of the ship ascertained as aforesaid; and if the ship has more than three decks, the tonnage of each space between decks above the tonnage deck shall be severally ascertained in manner above described, and shall be added to the tonnage of the ship ascertained as aforesaid.

RULE II.

For ships not requiring registry with cargo on board.

Length.

Breadth.

Girling of the ship.

Poop and other closed-in spaces on upper deck.

22. Ships which, requiring to be measured for any purpose other than registry, have cargo on board, and ships which, requiring to be measured for the purpose of registry, cannot be measured by the rule above given, shall be measured by the following rule, hereinafter called Rule II.:

(1.) Measure the length on the upper deck from the outside of the outer plank at the stem to the aftside of the stern post, deducting therefrom the distance between the aftside of the stern post and the rabbet of the stern post at the point where the counter plank crosses it; measure also the greatest breadth of the ship to the outside of the outer planking or wales, and then, having first marked on the outside of the ship on both sides thereof the height of the upper deck at the ship's sides, girt the ship at the greatest breadth in a direction perpendicular to the keel from the height so marked on the outside of the ship on the one side to the height so marked on the other side by passing a chain under the keel; to half the girth thus taken add half the main breadth; square the sum; multiply the result by the length of the ship taken as aforesaid; then multiply this product by the factor .0018 (eighteen ten-thousandths) in the case of ships built of wood, and .0021 (twenty-one ten-thousandths) in the case of ships built of iron, and the product shall be deemed the register tonnage of the ship, subject to the additions and deductions hereinafter mentioned.

(2.) If there be a break, a poop, or other closed-in space on the upper deck, the tonnage of such space shall be ascertained by multiplying together the mean length, breadth and depth of such space, and dividing the product by 100, and the quotient so obtained shall be deemed to be the tonnage of such space, and shall, subject to the deduction for a closed-in space appropriated to the crew as mentioned in Rule I., be added to the tonnage of the ship ascertained as aforesaid.

RULE III.

Allowance for engine room in steamers.

23. In every ship propelled by steam or other power requiring engine room, an allowance shall be made for the space occupied by the propelling power, and the amount so allowed shall be deducted from the gross tonnage of the ship ascertained as aforesaid, and the remainder shall be deemed to be the register tonnage of such ship; and such deduction shall be estimated as follows; (that is to say,)

(a.) As regards ships propelled by paddle wheels in which the tonnage of the space solely occupied by and necessary for the proper working of the boilers and machinery is above twenty per cent. and under thirty per cent. of the gross tonnage of the ship, such deduction shall be thirty-seven one-hundredths of such gross tonnage; and in ships propelled by screws in which the tonnage of such space is above thirteen per cent. and under twenty per cent. of such gross tonnage, such deduction shall be thirty-two one-hundredths of such gross tonnage:

To be rateable in ordinary steamers.

(b.) As regards all other ships, the deduction shall, if the Commissioners of Customs and the owner both agree thereto, be estimated in the same manner; but either they or he may in their or his discretion require the space to be measured and the deduction estimated accordingly; and whenever such measurement is so required the deduction shall consist of the tonnage of the space actually occupied by or required to be inclosed for the proper working of the boilers and machinery, with the addition in the case of ships propelled by paddle wheels of one half, and in the case of ships propelled by screws of three fourths of the tonnage of such space; and the measurement and use of such space shall be governed by the following rules; (that is to say,)

May be measured where the space is unusually large or small.

- (1.) Measure the mean depth of the space from its crown to the ceiling at the limber strake, measure also three, or, if necessary, more than three breadths of the space at the middle of its depth, taking one of such measurements at each end, and another at the middle of the length; take the mean of such breadths; measure also the mean length of the space between the foremost and aftermost bulkheads or limits of its length, excluding such parts, if any, as are not actually occupied by or required for the proper working of the machinery; multiply together these three dimensions of length, breadth and depth, and the product will be the cubical contents of the space below the crown; then find the cubical contents of the space or spaces, if any, above the crown aforesaid, which are framed in for the machinery or for the admission of light and air, by multiplying together the length, depth and breadth thereof; add such contents to the cubical contents of the space below the crown; divide the sum by 100; and the result shall be deemed to be the tonnage of the said space:
- (2.) If in any ship in which the space aforesaid is to be measured the engines and boilers are fitted in separate compartments, the contents of each shall be measured severally in like manner, according to the above rules, and the sum of their several results shall be deemed to be the tonnage of the said space:
- (3.) In the case of screw steamers in which the space aforesaid is to be measured, the contents of the shaft trunk shall be added to and deemed to form part of such space, and shall be ascertained by multiplying together the mean length, breadth and depth of the trunk, and dividing the product by 100:
- (4.) If in any ship in which the space aforesaid is to be measured any alteration be made in the length or capacity of such space, or if any cabins be fitted in such space, such ship shall be deemed to be a ship not registered until remeasurement:
- (5.) If in any ship in which the space aforesaid is to be measured any goods or stores are stowed or carried in such space, the master and owner shall each be liable to a penalty not exceeding one hundred pounds.

Mode of measurement.

In case of separate compartments.

Shaft trunk of screw steamer.

Alteration of engine room.

Penalty for carrying goods in such space.

RULE IV.

24. In ascertaining the tonnage of open ships the upper edge of the upper strake is to form the boundary line of measurement, and the depths shall be taken from an athwartship line, extended from upper edge to upper edge of the said strake at each division of the length.

Open ships how measured.

Tonnage and number of certificate to be carved on main beam.

25. In every registered British ship the number denoting the register tonnage, ascertained as hereinbefore directed, and the number of her certificate of registry, shall be deeply carved or otherwise permanently marked on her main beam, and shall be so continued; and if it at any time cease to be so continued such ship shall no longer be recognized as a British ship.

Tonnage when once ascertained to be ever after deemed the tonnage.

26. Whenever the tonnage of any ship has been ascertained and registered in accordance with the provisions of this act, the same shall thenceforth be deemed to be the tonnage of such ship, and be repeated in every subsequent registry thereof, unless any alteration is made in the form or capacity of such ship, or unless it is discovered that the tonnage of such ship has been erroneously computed; and in either of such cases such ship shall be remeasured, and her tonnage determined and registered according to the rules hereinbefore contained in that behalf.

Remeasurement of ships already registered may be made, but not to be compulsory.

27. The rules for the measurement of tonnage herein contained shall not make it necessary to alter the present registered tonnage of any British ship registered before this act comes into operation; but if the owner of any such ship desires to have the same remeasured according to such rules, he may apply to the Commissioners of Customs for the purpose, and such commissioners shall thereupon, and on payment of such reasonable charge for the expenses of remeasurement, not exceeding the sum of seven shillings and sixpence for each transverse section, as they may authorize, direct such remeasurement to be made, and such ship shall thereupon be remeasured according to such rules as aforesaid, or according to such of them as may be applicable; and the number denoting the register tonnage shall be altered accordingly.

Power to remeasure engine rooms improperly extended.

28. If it appears to the Commissioners of Customs that in any steam ship measured before this act comes into operation store rooms or coal bunkers have been introduced into or thrown across the engine room, so that the deduction from the tonnage on account of the engine room is larger than it ought to be, the said commissioners may, if they think fit, direct such engine room to be remeasured according to the rules in force before this act comes into operation, excluding the space occupied by such store rooms or coal bunkers, or may, if the owner so desire, cause the ship to be remeasured according to the rules hereinbefore contained, and subject to the conditions contained in the last preceding section; and after remeasurement the said commissioners shall cause the ship to be registered anew, or the registry thereof to be altered, as the case may require.

Officers may be appointed and regulations made for measurement of ships.

29. The Commissioners of Customs may, with the sanction of the treasury, appoint such persons to superintend the survey and admeasurement of ships as they think fit; and may, with the approval of the Board of Trade, make such regulations for that purpose as may be necessary; and also, with the like approval, make such modifications and alterations as from time to time become necessary in the tonnage rules hereby prescribed, in order to the more accurate and uniform application thereof, and the effectual carrying out of the principle of admeasurement therein adopted.

Registry of British Ships.

Registrars of British ships.

Registry of British Ships.

30. The following persons are required to register British ships, and shall be deemed registrars for the purposes of this act; (that is to say,)

- (1.) At any port or other place in the United Kingdom or Isle of Man approved by the Commissioners of Customs for the registry of ships, the collector, comptroller or other principal officer of customs for the time being;
- (2.) In the Islands of Guernsey and Jersey, the principal officers of her

Majesty's customs, together with the governor, lieutenant-governor or other person administering the government of such islands respectively :

- (3.) In Malta, Gibraltar and Heligoland, the governor, lieutenant-governor or other person administering the government of such places respectively :
- (4.) At any port or place so approved as aforesaid within the limits of the charter but not under the government of the East India Company, and at which no custom house is established, the collector of duties, together with the governor, lieutenant-governor or other person administering the government :
- (5.) At the ports of Calcutta, Madras and Bombay, the master attendants, and at any other port or place so approved as aforesaid within the limits of the charter and under the government of the East India Company, the collector of duties, or any other person of six years standing in the civil service of the said company who is appointed by any of the governments of the said company to act for this purpose :
- (6.) At every other port or place so approved as aforesaid within her Majesty's dominions abroad, the collector, comptroller or other principal officer of customs or of navigation laws, or if there is no such officer resident at such port or place, the governor, lieutenant-governor or other person administering the government of the possession in which such port or place is situate.

31. The governor, lieutenant-governor or other person administering the government in any British possession where any ship is registered under the authority of this act shall, with regard to the performance of any act or thing relating to the registry of a ship or of any interest therein, be considered in all respects as occupying the place of the Commissioners of Customs ; and any British consular officer shall, in any place where there is no justice of the peace, be authorized to take any declaration hereby required or permitted to be made in the presence of a justice of the peace.

Substitution of governor abroad for Commissioners of Customs, and of consul for justice.

32. Every registrar shall keep a book, to be called " The Register Book," and enter therein the particulars hereinafter required to be registered.

Registrar to keep register books.

33. The port or place at which any British ship is registered for the time being shall be considered her port of registry or the port to which she belongs.

Port of registry of British ship.

34. The following rules shall be observed with respect to the names of British registered ships ; (that is to say,)

Name of ship.

- (1.) Before registry the name of each ship and of the port to which she belongs shall be painted on a conspicuous part of her stern on a dark ground in white or yellow letters of a length not less than four inches :
- (2.) No change shall be made in the name of any registered ship :
- (3.) No concealment, absence or avoidable obliteration of the above names shall be permitted except for the purpose of escaping capture by an enemy :
- (4.) The ship shall not be described by or with the knowledge of the owner or master by any name other than the one by which she is registered :

And for every breach of the above rules or any of them the owner and master shall each incur a penalty not exceeding one hundred pounds.

35. Every application for the registry of a ship shall in the case of individuals be made by the person requiring to be registered as owner, or

Application for registry, by whom to be made.

by some one or more of such persons if more than one, or by his or their duly authorized agent, and in the case of bodies corporate by their duly authorized agent; the authority of such agent, if appointed by individuals, to be testified by some writing under the hands of the appointors, and if appointed by a body corporate, by some instrument under the common seal of such body corporate.

Survey of ship.

36. Before registry, the ship shall be surveyed by a person duly appointed under this act; and such surveyor shall grant a certificate in the form marked A. in the schedule hereto, specifying her tonnage, build and such other particulars descriptive of the identity of the ship as may from time to time be required by the Board of Trade; and such certificate shall be delivered to the registrar before registry.

Rules as to entries in register book.

37. The following rules shall be observed with respect to entries in the register book; (that is to say,)

- (1.) The property in a ship shall be divided into sixty-four shares:
- (2.) Subject to the provisions with respect to joint owners or owners by transmission hereinafter contained, not more than thirty-two individuals shall be entitled to be registered at the same time as owners of any one ship; but this rule shall not affect the beneficial title of any number of persons or of any company represented by or claiming under or through any registered owner or joint owner:
- (3.) No person shall be entitled to be registered as owner of any fractional part of a share in a ship; but any number of persons, not exceeding five, may be registered as joint owners of a ship or of a share or shares therein:
- (4.) Joint owners shall be considered as constituting one person only as regards the foregoing rule relating to the number of persons entitled to be registered as owners, and shall not be entitled to dispose in severalty of any interest in any ship or in any share or shares therein in respect of which they are registered:
- (5.) A body corporate may be registered as owner by its corporate name.

Declaration of ownership by individual owner.

38. No person shall be entitled to be registered as owner of a ship or any share therein until he has made and subscribed a declaration in the form marked B. in the schedule hereto, referring to the ship as described in the certificate of the surveyor, and containing the following particulars; (that is to say,)

- (1.) A statement of his qualification to be an owner of a share in a British ship:
- (2.) A statement of the time when and the place where such ship was built, or (if the ship is foreign-built, and the time and place of building not known,) a statement that she is foreign-built, and that he does not know the time or place of her building; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or (in the case of a ship condemned) a statement of the time, place and court at and by which she was condemned:
- (3.) A statement of the name of the master:
- (4.) A statement of the number of shares in such ship of which he is entitled to be registered as owner:
- (5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in such ship or any share therein:

The above declaration of ownership shall be made and subscribed in the presence of the registrar if the declarant reside within five miles of the custom house of the port of registry, but if beyond that distance, in the presence of any registrar or of any justice of the peace.

39. No body corporate shall be entitled to be registered as owner of a ship or of any share therein until the secretary or other duly appointed public officer of such body corporate has made and subscribed in the presence of the registrar of the port of registry a declaration in the form marked C. in the schedule hereto, referring to the ship as described in the certificate of the surveyor, and containing the following particulars; (that is to say,)

Declaration of ownership by body corporate.

- (1.) A statement of such circumstances of the constitution and business of such body corporate as prove it to be qualified to own a British ship:
- (2.) A statement of the time when and the place where such ship was built, or (if the ship is foreign-built, and the time and place of building unknown) a statement that she is foreign-built, and that he does not know the time or place of her building; and, in addition thereto, in the case of a foreign ship, a statement of her foreign name, or (in the case of a ship condemned) a statement of the time, place and court at and by which she was condemned:
- (3.) A statement of the name of the master:
- (4.) A statement of the number of shares in such ship of which such body corporate is owner:
- (5.) A denial that, to the best of his knowledge and belief, any unqualified person or body of persons is entitled as owner to any legal or beneficial interest in such ship or any share therein.

40. Upon the first registry of a ship there shall, in addition to the declaration of ownership, be produced the following evidence; (that is to say,)

Evidence to be produced on registry.

- (1.) In the case of a British-built ship, a certificate (which the builder is hereby required to grant under his hand) containing a true account of the proper denomination and of the tonnage of such ship as estimated by him, and of the time when and of the place where such ship was built, together with the name of the party (if any) on whose account he has built the same, and, if any sale or sales have taken place, the bill or bills of sale under which the ship or share therein has become vested in the party requiring to be registered as owner:
- (2.) In the case of a foreign-built ship, the same evidence as in the case of a British-built ship, unless the person requiring to be registered as owner, or, in the case of a body corporate, the duly appointed officer, declares that the time or place of her building is unknown, or that the builder's certificate cannot be procured, in which case there shall be required only the bill or bills of sale under which the ship or share therein became vested in the party requiring to be registered as owner thereof:
- (3.) In the case of a ship condemned by any competent court, an official copy of the condemnation of such ship.

41. If any builder wilfully makes a false statement in any certificate hereby required to be granted by him, he shall for every such offence incur a penalty not exceeding one hundred pounds.

Penalty on builder for false certificate.

42. As soon as the foregoing requisites to the due registry of a ship have been complied with, the registrar shall enter in the register book the following particulars relating to such ship; (that is to say,)

Particulars of entry in register book.

- (1.) The name of the ship and of the port to which she belongs:
- (2.) The details as to her tonnage, build and description comprised in the certificate hereinbefore directed to be given by the surveyor:
- (3.) The several particulars as to her origin stated in the declaration or declarations of ownership:
- (4.) The names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are interested in such ship.

No notice taken
of trusts.

43. No notice of any trust, express, implied or constructive, shall be entered in the register book, or receivable by the registrar; and, subject to any rights and powers appearing by the register book to be vested in any other party, the registered owner of any ship or share therein shall have power absolutely to dispose in manner hereinafter mentioned of such ship or share, and to give effectual receipts for any money paid or advanced by way of consideration.

*Certificate of
Registry.*

Certificate of
registry to be
granted.

Certificate of Registry.

44. Upon the completion of the registry of any ship the registrar shall grant a certificate of registry in the form marked D. in the schedule hereto, comprising the following particulars; (that is to say,)

- (1.) The name of the ship and of the port to which she belongs;
- (2.) The details as to her tonnage, build and description comprised in the certificate hereinbefore directed to be given by the surveyor;
- (3.) The name of her master;
- (4.) The several particulars as to her origin stated in the declaration or declarations of ownership;
- (5.) The names and descriptions of her registered owner or owners, and if there is more than one such owner, the proportions in which they are respectively interested, indorsed upon such certificate.

Change of owners
to be indorsed on
certificate of
registry.

45. Whenever any change takes place in the registered ownership of any ship, then, if such change occurs at a time when the ship is at her port of registry, the master shall forthwith deliver the certificate of registry to the registrar, and he shall indorse thereon a memorandum of such change; but if such change occurs during the absence of the ship from her port of registry, then upon her first return to such port the master shall deliver the certificate of registry to the registrar, and he shall indorse thereon a like memorandum of the change; or if she previously arrives at any port where there is a British registrar, such registrar shall, upon being advised by the registrar of her port of registry of the change having taken place, indorse a like memorandum thereof on the certificate of registry, and may for that purpose require the certificate to be delivered to him, so that the ship be not thereby detained; and any master who fails to deliver to the registrar the certificate of registry as hereinbefore required shall incur a penalty not exceeding one hundred pounds.

Change of master
to be indorsed on
certificate of re-
gistry.

46. Whenever the master of any British registered ship is changed, the following persons, that is to say, if such change is made in consequence of the sentence of any Naval Court, the presiding officer of such Court, but if the change takes place from any other cause, the registrar, or if there is no registrar, the British consular officer resident at the port where such change takes place, shall indorse on the certificate of registry a memorandum of such change, and subscribe his name to such indorsement, and forthwith report the change of master to the Commissioners of Customs in London; and the officers of customs at any port situate within her Majesty's dominions may refuse to admit any person to do any act at such port as master of any British ship, unless his name is inserted in or indorsed upon the certificate of registry of such ship as the last appointed master thereof.

Power to grant
new certificate.

47. The registrar may, with the sanction of the Commissioners of Customs, upon the delivery up to him of the former certificate of registry, grant a new certificate in the place of the one so delivered up.

Provision in case
of loss of certifi-
cate.

48. In the event of the certificate of registry of any ship being mislaid, lost or destroyed, if such event occurs at any port in the United Kingdom, the ship being registered in the United Kingdom, or at any port in any British possession, the ship being registered in the same British possession,

then the registrar of her port of registry shall grant a new certificate of registry in lieu of and as a substitute for her original certificate of registry; but if such event occurs elsewhere, the master or some other person having knowledge of the circumstances shall make a declaration before the registrar of any port having a British registrar at which such ship is at the time or first arrives after such mislaying, loss or destruction; and such declaration shall state the facts of the case, and the names and descriptions of the registered owners of such ship, to the best of the declarant's knowledge and belief; and the registrar shall thereupon grant a provisional certificate as near to the form appointed by this act as circumstances permit, and shall insert therein a statement of the circumstances under which such provisional certificate is granted.

49. Every such provisional certificate shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered in the United Kingdom, or if registered elsewhere, at her port of discharge in the British possession within which her port of registry is situate, be delivered up to the registrar thereof, who shall thereupon grant a new one, as near to the form appointed by this act as circumstances permit; and if the master neglects to deliver up such certificate within such time, he shall incur a penalty not exceeding fifty pounds.

Provisional certificate to be delivered up.

50. The certificate of registry shall be used only for the lawful navigation of the ship, and shall not be subject to detention by reason of any title, lien, charge or interest whatsoever which any owner, mortgagee or other person may have or claim to have on or in the ship described in such certificate; and if any person whatever, whether interested or not in the ship, refuses on request to deliver up such certificate when in his possession or under his control to the person for the time being entitled to the custody thereof for the purposes of such lawful navigation as aforesaid, or to any registrar, officer of the customs or other person legally entitled to require such delivery, it shall be lawful for any justice, by warrant under his hand and seal, or for any Court capable of taking cognizance of such matter, to cause the person so refusing to appear before him and to be examined touching such refusal; and unless it is proved to the satisfaction of such justice or Court that there was reasonable cause for such refusal, the offender shall incur a penalty not exceeding one hundred pounds; but if it is made to appear to such justice or Court that the certificate is lost, the party complained of shall be discharged, and such justice or Court shall thereupon certify that the certificate of registry is lost.

Custody of certificate.

Delivery of certificate may be required.

Penalty for detention.

51. If the person charged with such detainer or refusal is proved to have absconded, so that the warrant of the justice or process of the Court cannot be served upon him, or if he persists in his refusal to deliver the certificate, such justice or Court shall certify the fact, and the same proceedings may then be taken as in the case of a certificate of registry mislaid, lost or destroyed, or as near thereto as circumstances permit.

Mode of proceeding if detaining party abscond.

52. If the master or owner of any ship uses or attempts to use for the navigation of such ship a certificate of registry not legally granted in respect of such ship, he shall be guilty of a misdemeanor, and it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to seize and detain such ship, and to bring her for adjudication before the High Court of Admiralty in England or Ireland or any Court having admiralty jurisdiction in her Majesty's dominions; and if such Court is of opinion that such use or attempt at use has taken place, it shall pronounce such ship, with her tackle, apparel and furniture, to be forfeited to her Majesty, and may award such portion of the proceeds arising

Penalty for using improper certificate.

from the sale of such ship as it may think just to the officer so bringing in the same for adjudication.

Certificate of ship lost or ceasing to be British to be delivered up.

53. If any registered ship is either actually or constructively lost, taken by the enemy, burnt or broken up, or if by reason of a transfer to any persons not qualified to be owners of British ships, or of any other matter or thing, any such ship as aforesaid ceases to be a British ship, every person who at the time of the occurrence of any of the aforesaid events owns such ship or any share therein shall, immediately upon obtaining knowledge of any such occurrence, if no notice thereof has already been given to the registrar at the port of registry of such ship, give such notice to him, and he shall make an entry thereof in his register book; and, except in cases where the certificate of registry is lost or destroyed, the master of every ship so circumstanced as aforesaid shall immediately, if such event occurs in port, but if the same occurs elsewhere, then within ten days after his arrival in port, deliver the certificate of registry of such ship to the registrar, or, if there be no registrar, to the British consular officer at such port, and such registrar if he is not himself the registrar of her port of registry, or such British consular officer, shall forthwith forward the certificate so delivered to him to the registrar of the port of registry of the ship; and every owner and master who, without reasonable cause, makes default in obeying the provisions of this section shall for each offence incur a penalty not exceeding one hundred pounds.

Provisional certificate for ship becoming vested in British owners at foreign port.

54. If any ship becomes the property of persons qualified to be owners of British ships at any foreign port, the British consular officer resident at such port may grant the master of such ship, upon his application, a provisional certificate, stating—

The name of the ship;

The time and place of her purchase, and the names of her purchasers;

The name of her master;

The best particulars as to her tonnage, build and description that he is able to obtain;

And he shall forward a copy of such certificate, at the first convenient opportunity, to the Commissioners of Customs in London: the certificate so granted shall possess the same force as a certificate of registry until the expiration of six months, or until such earlier time as the ship arrives at some port where there is a British registrar; but upon the expiration of such period, or upon arrival at such port, shall be void to all intents.

Transfers and Transmissions.

Transfers and Transmissions.

Transfer of ships or shares therein.

55. A registered ship or any share therein, when disposed of to persons qualified to be owners of British ships, shall be transferred by bill of sale; and such bill of sale shall contain such description of the ship as is contained in the certificate of the surveyor, or such other description as may be sufficient to identify the ship to the satisfaction of the registrar, and shall be according to the form marked E. in the schedule hereto, or as near thereto as circumstances permit, and shall be executed by the transferror in the presence of and be attested by one or more witnesses.

Declaration to be made by transferee.

56. No individual shall be entitled to be registered as transferee of a ship or any share therein until he has made a declaration in the form marked F. in the schedule hereto, stating his qualification to be registered as owner of a share in a British ship, and containing a denial similar to the denial hereinbefore required to be contained in a declaration of ownership by an original owner; and no body corporate shall be entitled to be registered as transferee of a ship or any share therein until the secretary or other duly appointed public officer of such body corporate has made a declaration in the form marked G. in the schedule hereto, stating the name

of such body corporate, and such circumstances of its constitution and business as may prove it to be qualified to own a British ship, and containing a denial similar to the denial hereinbefore required to be contained in a declaration of ownership made on behalf of a body corporate : in the case of an individual, the above declaration shall be made, if he reside within five miles of the custom house of the port of registry, in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace ; in the case of a body corporate the declaration shall be made in the presence of the registrar of the port of registry.

57. Every bill of sale for the transfer of any registered ship, or of any share therein, when duly executed, shall be produced to the registrar of the port at which the ship is registered, together with the declaration hereinbefore required to be made by a transferee ; and the registrar shall thereupon enter in the register book the name of the transferee as owner of the ship or share comprised in such bill of sale, and shall indorse on the bill of sale the fact of such entry having been made, with the date and hour thereof ; and all bills of sale of any ship or shares in a ship shall be entered in the register book in the order of their production to the registrar.

Registration of transfer.

58. If the property in any ship or in any share therein becomes transmitted in consequence of the death or bankruptcy or insolvency of any registered owner, or in consequence of the marriage of any female registered owner, or by any lawful means other than by a transfer according to the provisions of this act, such transmission shall be authenticated by a declaration of the person to whom such property has been transmitted, made in the form marked H. in the schedule hereto, and containing the several statements hereinbefore required to be contained in the declaration of a transferee, or as near thereto as circumstances permit, and, in addition, a statement describing the manner in which and the party to whom such property has been transmitted ; and such declaration shall be made and subscribed if the declarant resides at or within five miles of the custom house of the port of registry in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace.

Transmission of shares by death, bankruptcy or marriage.

59. If such transmission has taken place by virtue of the bankruptcy or insolvency of any registered owner, the said declaration shall be accompanied by such evidence as may for the time being be receivable in courts of justice as proof of the title of parties claiming under any bankruptcy or insolvency ; and if such transmission has taken place by virtue of the marriage of a female owner, the said declaration shall be accompanied by a copy of the register of such marriage or other legal evidence of the celebration thereof, and shall declare the identity of the said female owner ; and if such transmission has taken place by virtue of any testamentary instrument or by intestacy, then in England, Wales and Ireland the said declaration shall be accompanied by the probate of the will or the letters of administration or an official extract therefrom, and in Scotland or in any British possession by the will or any copy thereof that may be evidence by the laws of Scotland or of such possession, or by letters of administration or any copy thereof, or by such other document as may by the laws of Scotland or of such possession be receivable in the courts of judicature thereof as proof of the person entitled upon an intestacy.

Proof of transmission by bankruptcy, marriage, will, or on intestacy.

60. The registrar, upon the receipt of such declaration so accompanied as aforesaid, shall enter the name of the person or persons entitled under such transmission in the register book as owner or owners of the ship or share therein in respect of which such transmission has taken place ; and such persons, if more than one, shall, however numerous, be considered as one person only as regards the rule hereinbefore contained relating to the number of persons entitled to be registered as owners.

Registration of transmitted share.

Registrar to retain certain evidence.

61. Of the documents hereby required to be produced to the registrar he shall retain in his possession the following ; that is to say, the surveyor's certificate, the builder's certificate, the copy of the condemnation, and all declarations of ownership.

Unqualified owner entitled by transmission may apply to Court for sale of ship.

62. Whenever any property in a ship or share in a ship becomes vested by transmission on the death of any owner or on the marriage of any female owner in any person not qualified to be the owner of British ships, it shall be lawful, if such ship is registered in England or Ireland for the Court of Chancery, if in Scotland for the Court of Session, or if in any British possession for any Court possessing the principal civil jurisdiction within such possession, upon an application made by or on behalf of such unqualified person, to order a sale to be made of the property so transmitted, and to direct the proceeds of such sale, after deducting the expenses thereof, to be paid to the person entitled under such transmission, or otherwise as the Court may direct ; and it shall be in the discretion of any such Court as aforesaid to make or refuse any such order for sale, and to annex thereto any terms or conditions, and to require any evidence in support of such application, it may think fit, and generally to act in the premises in such manner as the justice of the case requires.

Order to be made by Court.

63. Every order for a sale made by such Court as aforesaid shall contain a declaration vesting the right to transfer the ship or share so to be sold in some person or persons named by the Court, and such nominee or nominees shall thereupon be entitled to transfer such ship or share in the same manner, and to the same extent, as if he or they were the registered owner or owners of the same ; and every registrar shall obey the requisition of such nominee or nominees as aforesaid in respect of any transfer to the same extent as he would be compellable to obey the requisition of any registered owner or owners of such ship or share.

Limit of time for application.

64. Every such application as aforesaid for sale shall be made within four weeks after the occurrence of the event on which such transmission has taken place, or within such further time as such Court as aforesaid may allow, such time not in any case to exceed the space of one year from the date of such occurrence as aforesaid ; and in the event of no such application being made within such period as aforesaid, or of such Court refusing to accede thereto, the ship or share so transmitted shall thereupon be forfeited in manner hereinafter directed with respect to interests acquired by unqualified owners in ships using a British flag and assuming the British character.

Power of Courts to prohibit transfers.

65. It shall be lawful in England or Ireland for the Court of Chancery, in Scotland for the Court of Session, in any British possession for any Court possessing the principal civil jurisdiction within such possession, without prejudice to the exercise of any other power such Court may possess, upon the summary application of any interested person made either by petition or otherwise, and either ex parte or upon service of notice on any other person, as the Court may direct, to issue an order prohibiting for a time to be named in such order any dealing with such ship or share ; and it shall be in the discretion of such Court to make or refuse any such order, and to annex thereto any terms or conditions it may think fit, and to discharge such order when granted with or without costs, and generally to act in the premises in such manner as the justice of the case requires ; and every registrar, without being made a party to the proceedings, upon being served with such order, or an official copy thereof, shall obey the same.

Mortgages.

Mortgage of ships and shares therein.

Mortgages.

66. A registered ship or any share therein may be made a security for a loan or other valuable consideration ; and the instrument creating such

security, hereinafter termed a "mortgage," shall be in the form marked I. in the schedule hereto, or as near thereto as circumstances permit; and on the production of such instrument the registrar of the port at which the ship is registered shall record the same in the register book.

67. Every such mortgage shall be recorded by the registrar in the order of time in which the same is produced to him for that purpose; and the registrar shall, by memorandum under his hand, notify on the instrument of mortgage that the same has been recorded by him, stating the date and hour of such record.

Mortgages to be registered in order of time of production.

68. Whenever any registered mortgage has been discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money indorsed thereon, duly signed and attested, make an entry in the register book to the effect that such mortgage has been discharged; and upon such entry being made the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made.

Entry of discharge of mortgage.

69. If there is more than one mortgage registered of the same ship or share therein, the mortgagees shall, notwithstanding any express, implied or constructive notice, be entitled in priority one over the other according to the date at which each instrument is recorded in the register books, and not according to the date of each instrument itself.

Priority of mortgages.

70. A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagor be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt.

Mortgagee not to be deemed owner.

71. Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money; but if there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgagee shall, except under the order of some Court capable of taking cognizance of such matters, sell such ship or share without the concurrence of every prior mortgagee.

Mortgagee to have power of sale.

72. No registered mortgage of any ship or of any share therein shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding such mortgagor at the time of his becoming bankrupt may have in his possession and disposition and be reputed owner of such ship or share thereof; and such mortgage shall be preferred to any right, claim or interest in such ship or any share thereof which may belong to the assignees of such bankrupt.

Rights of mortgagee not affected by any act of bankruptcy of mortgagor.

73. A registered mortgage of any ship or share in a ship may be transferred to any person, and the instrument creating such transfer shall be in the form marked K. in the schedule hereto, and on the production of such instrument the registrar shall enter in the register book the name of the transferee as mortgagee of the ship or shares therein mentioned, and shall by memorandum under his hand record on the instrument of transfer that the same has been recorded by him, stating the date and hour of such record.

Transfer of mortgages.

74. If the interest of any mortgagee in any ship or in any share therein becomes transmitted in consequence of death, bankruptcy or insolvency, or in consequence of the marriage of any female mortgagee, or by any lawful

Transmission of interest of mortgagee by death, bankruptcy or marriage.

Registrar to retain certain evidence.

61. Of the documents hereby required to be produced to the registrar he shall retain in his possession the following ; that is to say, the surveyor's certificate, the builder's certificate, the copy of the condemnation, and all declarations of ownership.

Unqualified owner entitled by transmission may apply to Court for sale of ship.

62. Whenever any property in a ship or share in a ship becomes vested by transmission on the death of any owner or on the marriage of any female owner in any person not qualified to be the owner of British ships, it shall be lawful, if such ship is registered in England or Ireland for the Court of Chancery, if in Scotland for the Court of Session, or if in any British possession for any Court possessing the principal civil jurisdiction within such possession, upon an application made by or on behalf of such unqualified person, to order a sale to be made of the property so transmitted, and to direct the proceeds of such sale, after deducting the expenses thereof, to be paid to the person entitled under such transmission, or otherwise as the Court may direct ; and it shall be in the discretion of any such Court as aforesaid to make or refuse any such order for sale, and to annex thereto any terms or conditions, and to require any evidence in support of such application, it may think fit, and generally to act in the premises in such manner as the justice of the case requires.

Order to be made by Court.

63. Every order for a sale made by such Court as aforesaid shall contain a declaration vesting the right to transfer the ship or share so to be sold in some person or persons named by the Court, and such nominee or nominees shall thereupon be entitled to transfer such ship or share in the same manner, and to the same extent, as if he or they were the registered owner or owners of the same ; and every registrar shall obey the requisition of such nominee or nominees as aforesaid in respect of any transfer to the same extent as he would be compellable to obey the requisition of any registered owner or owners of such ship or share.

Limit of time for application.

64. Every such application as aforesaid for sale shall be made within four weeks after the occurrence of the event on which such transmission has taken place, or within such further time as such Court as aforesaid may allow, such time not in any case to exceed the space of one year from the date of such occurrence as aforesaid ; and in the event of no such application being made within such period as aforesaid, or of such Court refusing to accede thereto, the ship or share so transmitted shall thereupon be forfeited in manner hereinafter directed with respect to interests acquired by unqualified owners in ships using a British flag and assuming the British character.

Power of Courts to prohibit transfers.

65. It shall be lawful in England or Ireland for the Court of Chancery, in Scotland for the Court of Session, in any British possession for any Court possessing the principal civil jurisdiction within such possession, without prejudice to the exercise of any other power such Court may possess, upon the summary application of any interested person made either by petition or otherwise, and either ex parte or upon service of notice on any other person, as the Court may direct, to issue an order prohibiting for a time to be named in such order any dealing with such ship or share ; and it shall be in the discretion of such Court to make or refuse any such order, and to annex thereto any terms or conditions it may think fit, and to discharge such order when granted with or without costs, and generally to act in the premises in such manner as the justice of the case requires ; and every registrar, without being made a party to the proceedings, upon being served with such order, or an official copy thereof, shall obey the same.

Mortgages.

Mortgage of ships and shares therein.

Mortgages.

66. A registered ship or any share therein may be made a security for a loan or other valuable consideration ; and the instrument creating such

security, hereinafter termed a "mortgage," shall be in the form marked I. in the schedule hereto, or as near thereto as circumstances permit; and on the production of such instrument the registrar of the port at which the ship is registered shall record the same in the register book.

67. Every such mortgage shall be recorded by the registrar in the order of time in which the same is produced to him for that purpose; and the registrar shall, by memorandum under his hand, notify on the instrument of mortgage that the same has been recorded by him, stating the date and hour of such record.

Mortgages to be registered in order of time of production.

68. Whenever any registered mortgage has been discharged, the registrar shall, on the production of the mortgage deed, with a receipt for the mortgage money indorsed thereon, duly signed and attested, make an entry in the register book to the effect that such mortgage has been discharged; and upon such entry being made the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had ever been made.

Entry of discharge of mortgage.

69. If there is more than one mortgage registered of the same ship or share therein, the mortgagees shall, notwithstanding any express, implied or constructive notice, be entitled in priority one over the other according to the date at which each instrument is recorded in the register books, and not according to the date of each instrument itself.

Priority of mortgages.

70. A mortgagee shall not by reason of his mortgage be deemed to be the owner of a ship or any share therein, nor shall the mortgagor be deemed to have ceased to be owner of such mortgaged ship or share, except in so far as may be necessary for making such ship or share available as a security for the mortgage debt.

Mortgagee not to be deemed owner.

71. Every registered mortgagee shall have power absolutely to dispose of the ship or share in respect of which he is registered, and to give effectual receipts for the purchase money; but if there are more persons than one registered as mortgagees of the same ship or share, no subsequent mortgagee shall, except under the order of some Court capable of taking cognizance of such matters, sell such ship or share without the concurrence of every prior mortgagee.

Mortgagee to have power of sale.

72. No registered mortgage of any ship or of any share therein shall be affected by any act of bankruptcy committed by the mortgagor after the date of the record of such mortgage, notwithstanding such mortgagor at the time of his becoming bankrupt may have in his possession and disposition and be reputed owner of such ship or share thereof; and such mortgage shall be preferred to any right, claim or interest in such ship or any share thereof which may belong to the assignees of such bankrupt.

Rights of mortgagee not affected by any act of bankruptcy of mortgagor.

73. A registered mortgage of any ship or share in a ship may be transferred to any person, and the instrument creating such transfer shall be in the form marked K. in the schedule hereto, and on the production of such instrument the registrar shall enter in the register book the name of the transferee as mortgagee of the ship or shares therein mentioned, and shall by memorandum under his hand record on the instrument of transfer that the same has been recorded by him, stating the date and hour of such record.

Transfer of mortgages.

74. If the interest of any mortgagee in any ship or in any share therein becomes transmitted in consequence of death, bankruptcy or insolvency, or in consequence of the marriage of any female mortgagee, or by any lawful

Transmission of interest of mortgagee by death, bankruptcy or marriage.

means other than by a transfer according to the provisions of this act, such transmission shall be authenticated by a declaration of the person to whom such interest has been transmitted, made in the form marked L. in the schedule hereto, and containing a statement describing the manner in which and the party to whom such property has been transmitted; and such declaration shall be made and subscribed, if the declarant resides at or within five miles of the custom house of the port of registry, in the presence of the registrar, but if beyond that distance in the presence of any registrar or of any justice of the peace, and shall be accompanied by such evidence as is hereinbefore required to authenticate a corresponding transmission of property from one registered owner to another.

Entry of transmitted mortgage.

75. The registrar, upon the receipt of such declaration and the production of such evidence as aforesaid, shall enter the name of the person or persons entitled under such transmission in the register book as mortgagees or mortgagees of the ship or share in respect of which such transmission has taken place.

Certificates of Mortgage and Sale.

Certificates of Mortgage and Sale.

Power of mortgage and sale may be conferred by certificate.

76. Any registered owner, if desirous of disposing by way of mortgage or sale of the ship or share in respect of which he is registered at any place out of the country or possession in which the port of registry of such ship is situate, may apply to the registrar, who shall thereupon enable him to do so by granting such certificates as are hereinafter mentioned, to be called respectively certificates of mortgage or certificates of sale, according as they purport to give a power to mortgage or a power to sell.

Requisites for certificates of mortgage and sale.

77. Previously to any certificate of mortgage or sale being granted, the applicant shall state to the registrar, to be by him entered in the register book, the following particulars; (that is to say,)

- (1.) The names of the persons by whom the power mentioned in such certificate is to be exercised, and in the case of a mortgage the maximum amount of charge to be created, if it is intended to fix any such maximum, and in the case of a sale the minimum price at which a sale is to be made, if it is intended to fix any such minimum;
- (2.) The specific place or places where such power is to be exercised, or if no place be specified, then that it may be exercised anywhere, subject to the provisions hereinafter contained;
- (3.) The limit of time within which such power may be exercised.

Restrictions on certificates of mortgage and sale.

78. No certificate of mortgage or sale shall be granted so as to authorize any mortgage or sale to be made—

At any place within the United Kingdom, if the port of registry of the ship be situate in the United Kingdom; or at any place within the same British possession if the port of registry is situate within a British possession; or

By any person not named in the certificate.

Forms of certificates of mortgage and sale.

79. Certificates of mortgage and sale shall be in the forms marked respectively M. and N. in the schedule hereto, and shall contain a statement of the several particulars hereinbefore directed to be entered in the register book, and in addition thereto an enumeration of any registered mortgages or certificates of mortgage or sale affecting the ships or shares in respect of which such certificates are given.

Rules as to certificates of mortgage.

80. The following rules shall be observed as to certificates of mortgage; (that is to say,)

- (1.) The power shall be exercised in conformity with the directions contained in the certificate :
 - (2.) A record of every mortgage made thereunder shall be indorsed thereon by a registrar or British consular officer :
 - (3.) No mortgage *bonâ fide* made thereunder shall be impeached by reason of the person by whom the power was given dying before the making of such mortgage :
 - (4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no mortgage *bonâ fide* made to a mortgagee without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given :
 - (5.) Every mortgage which is so registered as aforesaid on the certificate shall have priority over all mortgages of the same ship or share created subsequently to the date of the entry of the certificate in the register book ; and if there be more mortgages than one so indorsed the respective mortgagees claiming thereunder shall, notwithstanding any express, implied or constructive notice, be entitled one before the other according to the date at which a record of each instrument is indorsed on the certificate, and not according to the date of the instrument creating the mortgage :
 - (6.) Subject to the foregoing rules every mortgagee whose mortgage is registered on the certificate shall have the same rights and powers and be subject to the same liabilities as he would have had and been subject to if his mortgage had been registered in the register book instead of on the certificate :
 - (7.) The discharge of any mortgage so registered on the certificate may be indorsed thereon by any registrar or British consular officer upon the production of such evidence as is hereby required to be produced to the registrar on the entry of the discharge of a mortgage in the register book ; and upon such indorsement being made, the estate, if any, which passed to the mortgagee shall vest in the same person or persons in whom the same would, having regard to intervening acts and circumstances, if any, have vested if no such mortgage had been made :
 - (8.) Upon the delivery of any certificate of mortgage to the registrar by whom it was granted he shall, after recording in the register book in such manner as to preserve its priority any unsatisfied mortgage registered thereon, cancel such certificate, and enter the fact of such cancellation in the register book ; and every certificate so cancelled shall be void to all intents.
81. The following rules shall be observed as to certificates of sale ; (that is to say,) Rules as to certificates of sale.
- (1.) No such certificate shall be granted except for the sale of an entire ship :
 - (2.) The power shall be exercised in conformity with the directions contained in the certificate :
 - (3.) No sale *bonâ fide* made to a purchaser for valuable consideration shall be impeached by reason of the person by whom the power was given dying before the making of such sale :
 - (4.) Whenever the certificate contains a specification of the place or places at which, and a limit of time not exceeding twelve months within which, the power is to be exercised, no sale *bonâ fide* made to a purchaser for valuable consideration without notice shall be impeached by reason of the bankruptcy or insolvency of the person by whom the power was given :
 - (5.) Any transfer made to a person qualified to be the owner of British

- ships shall be by bill of sale in the form hereinbefore mentioned, or as near thereto as circumstances permit :
- (6.) If the ship is sold to a party qualified to hold British ships, the ship shall be registered anew ; but notice of all mortgages enumerated on the certificate of sale shall be entered in the register book :
 - (7.) Previously to such registry anew there shall be produced to the registrar required to make the same the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry of such ship :
 - (8.) Such last-mentioned registrar shall retain the certificates of sale and registry, and after having indorsed on both of such instruments an entry of the fact of a sale having taken place, shall forward the said certificates to the registrar of the port appearing on such certificates to be the former port of registry of the ship, and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except as far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein :
 - (9.) On such registry anew the description of the ship contained in her original certificate of registry may be transferred to the new register book, without her being re-surveyed, and the declaration to be made by the purchaser shall be the same as would be required to be made by an ordinary transferee :
 - (10.) If the ship is sold to a party not qualified to be the owner of a British ship, the bill of sale by which the ship is transferred, the certificate of sale, and the certificate of registry shall be produced to some registrar or consular officer, who shall retain the certificates of sale and registry, and, having indorsed thereon the fact of such ship having been sold to persons not qualified to be owners of British ships, shall forward such certificates to the registrar of the port appearing on the certificate of registry to be the port of registry of such ship ; and such last-mentioned registrar shall thereupon make a memorandum of the sale in his register book, and the registry of the ship in such book shall be considered as closed, except so far as relates to any unsatisfied mortgages or existing certificates of mortgage entered therein :
 - (11.) If upon a sale being made to an unqualified person default is made in the production of such certificates as are mentioned in the last rule, such unqualified person shall be considered by British law as having acquired no title to or interest in the ship ; and further, the party upon whose application such certificate was granted, and the persons exercising the power, shall each incur a penalty not exceeding one hundred pounds :
 - (12.) If no sale is made in conformity with the certificate of sale, such certificate shall be delivered to the registrar by whom the same was granted ; and such registrar shall thereupon cancel it, and enter the fact of such cancellation in the register book ; and every certificate so cancelled shall be void to all intents.

Power of Commissioners of Customs in case of loss of certificate of mortgage or sale.

82. Upon proof at any time to the satisfaction of the Commissioners of Customs that any certificate of mortgage or sale is lost or so obliterated as to be useless, and that the powers thereby given have never been exercised, or if they have been exercised then upon proof of the several matters and things that have been done thereunder, it shall be lawful for the registrar, with the sanction of the said commissioners, as circumstances may require, either to issue a new certificate, or to direct such entries to be made in the register book or such other matter or thing to be done as might have been made or done if no such loss or obliteration had taken place.

83. The registered owner for the time being of any ship or share therein in respect of which a certificate of mortgage or sale has been granted, specifying the place or places where the power thereby given is to be exercised, may, by an instrument under his hand made in the form O. in the schedule hereto, or as near thereto as circumstances permit, authorize the registrar by whom such certificate was granted to give notice to the registrar or consular officer, registrars or consular officers, at such place or places, that such certificate is revoked; and notice shall be given accordingly; and all registrars or consular officers receiving such notice shall record the same, and shall exhibit the same to all persons who may apply to them for the purpose of effecting or obtaining a mortgage or transfer under the said certificate of mortgage or sale; and after such notice has been so recorded the said certificate shall, so far as concerns any mortgage or sale to be thereafter made at such place, be deemed to be revoked and of no effect; and every registrar or consular officer recording any such notice shall thereupon state to the registrar by whom the certificate was granted, whether any previous exercise of the power to which such certificate refers has taken place.

Revocation of certificates of mortgage and sale.

Registry anew and Transfer of Registry.

84. Whenever any registered ship is so altered as not to correspond with the particulars relating to her tonnage or description contained in the register book, then, if such alteration is made at a port where there is a registrar, the registrar of such port, but if made elsewhere, the registrar of the first port having a register at which the ship arrives after her alteration, shall, on application made to him, and on the receipt of a certificate from the proper surveyor specifying the nature of such alteration, either retain the old certificate of registry and grant a new certificate of registry containing a description of the ship as altered, or indorse on the existing certificate a memorandum of such alteration, and subscribe his name to such indorsement; and the registrar to whom such application as aforesaid is made, if he is the registrar of the port of registry of the ship, shall himself enter in his register book the particulars of the alteration so made, and the fact of such new certificate having been granted or indorsement having been made on the existing certificate; but if he is not such last-mentioned registrar, he shall forthwith report such particulars and facts as aforesaid, accompanied by the old certificate of registry in cases where a new one has been granted, to the registrar of the port of registry of the ship, who shall retain such old certificate (if any), and enter such particulars and facts in his register book accordingly.

Registry anew and Transfer of Registry.

Alteration in ship to be registered.

85. When the registrar to whom application is made in respect of any such alteration as aforesaid is the registrar of the port of registry, he may, if he thinks fit, instead of registering such alteration, require such ship to be registered anew in manner hereinbefore directed on the first registry of a ship, and if he is not such registrar as lastly hereinbefore mentioned he may nevertheless require such ship to be registered anew, but he shall in such last-mentioned case grant a provisional certificate or make a provisional indorsement of the alteration made in manner hereinbefore directed in cases where no registry anew is required, taking care to add to such certificate or indorsement a statement that the same is made provisionally, and to insert in his report to the registrar of the port of registry of the ship a like statement.

On alteration registry anew may be required.

86. Every such provisional certificate, or certificate provisionally indorsed, shall, within ten days after the first subsequent arrival of the ship at her port of discharge in the United Kingdom, if registered in the United Kingdom, or, if registered elsewhere, at her port of discharge in the British possession within which her port of registry is situate, be delivered up to

Grant of provisional certificate in respect of alteration.

APPENDIX.

the registrar thereof, who shall thereupon cause such ship to be registered anew in the same manner in all respects as hereinbefore required on the first registry of any ship.

Consequence of omission to re-register anew.

87. On failure of such registry anew of any ship or registry of alteration of any ship so altered as aforesaid, such ship shall be deemed not duly registered, and shall no longer be recognized as a British ship.

On change of owners, registry anew may be granted, if required.

88. If upon any change of ownership in any ship the owner or owners desire to have such ship registered anew, although such registry anew is not required by this act, it shall be lawful for the registrar of the port at which such ship is already registered, on the delivery up to him of the existing certificate of registry, and on the other requisites to registry, or such of them as the registrar thinks material, being duly complied with, to make such registry anew, and grant a certificate thereof.

Registry may be transferred from port to port.

89. The registry of any ship may be transferred from one port to another upon the application of all parties appearing on the register to be interested in such ship, whether as owners or mortgagees, such application to be expressed by a declaration in writing made and subscribed, if the party so required to make and subscribe the same resides at or within five miles of the custom house of the port from which such ship is to be transferred, in the presence of the registrar of such port, but if beyond that distance in the presence of any registrar or of any justice of the peace.

Manner of transfer of registry.

90. Upon such application being made as is hereinbefore mentioned, and upon the delivery to him of the certificate of registry, the registrar of the port at which such ship is already registered shall transmit to the registrar of the port at which such ship is intended to be registered notice of such application having been made to him, together with a true copy of all particulars relating to such ship, and the names of all the parties appearing by his book to be interested as owners or mortgagees in such ship; and such last-mentioned registrar shall, upon the receipt of such notice, enter all such particulars and names in his book of registry, and grant a fresh certificate of registry, and thenceforth such ship shall be considered as registered at and belonging to such last-mentioned port, and the name of such last-mentioned port shall be substituted on the stern of such ship in lieu of the name of the port previously appearing thereon.

Transfer of registry not to affect rights of owners.

91. The transfer of the registry of any ship in manner aforesaid shall not in any way affect the rights of the several persons interested either as owners or mortgagees in such ship, but such rights shall in all respects be maintained and continue in the same manner as if no such transfer had been effected.

Registry, Miscellaneous.

Registry, Miscellaneous.

Inspection of register books.

92. Every person may, upon payment of a fee to be fixed by the Commissioners of Customs not exceeding one shilling, have access to the register book for the purpose of inspection at any reasonable time during the hours of official attendance of the registrar.

Indemnity to registrar.

93. No registrar shall be liable to damages or otherwise for any loss accruing to any person by reason of any act done or default made by him in his character of registrar, unless the same has happened through his neglect or wilful act.

Return to be made by registrars to commissioners of customs.

94. Every registrar in the United Kingdom shall at the expiration of every month, and every other registrar shall without delay, or at such stated times as may be fixed by the Commissioners of Customs, transmit to the custom house in London a full return in such form as they may direct of all

registries, transfers, transmissions, mortgages and other dealings with ships which have been registered by or communicated to them in their character of registrars, and the names of the persons who have been concerned in the same, and such other particulars as may be directed by the said commissioners.

95. All fees authorized to be taken under the second part of this act shall, if taken in any part of the United Kingdom, be applied in payment of the general expenses of carrying into effect the purposes of such second part, or otherwise as the Treasury may direct, but if taken elsewhere shall be disposed of in such way as the executive government of the British possession in which they are taken may direct.

Application of fees.

96. The Commissioners of Customs shall cause the several forms required or authorized to be used by the second part of this act, and contained in the schedule hereto, to be supplied to all registrars within her Majesty's dominions for distribution to the several persons requiring to use the same, either free of charge, or at such moderate prices as they may from time to time direct, and the said commissioners, with the consent of the Board of Trade, may from time to time make such alterations in the forms contained in the schedule hereto as it may deem requisite, but shall, before issuing any altered form, give such public notice thereof as may be necessary in order to prevent inconvenience; and the said commissioners may also, with such consent as aforesaid, for the purposes of carrying into effect the provisions contained in the second part of this act, give such instructions as to the manner of making entries in the register book, as to the execution and attestation of powers of attorney, as to any evidence to be required for identifying any person, and generally as to any act or thing to be done in pursuance of the second part of this act, as they may think fit.

Commissioners of Customs to provide and with consent of Board of Trade may alter forms and issue instructions.

97. Whenever in any case in which under the second part of this act any person is required to make a declaration on behalf of himself or of any body corporate, or any evidence is required to be produced to the registrar, it is shown to the satisfaction of the registrar that from any reasonable cause such person is unable to make the declaration, or that such evidence cannot be produced, it shall be lawful for the registrar, with the sanction of the Commissioners of Customs, and upon the production of such other evidence, and subject to such terms as they may think fit, to dispense with any such declaration or evidence.

Power to registrar to dispense with declarations and other evidence.

98. In cases where it appears to the Commissioners of Customs, or to the governor or other person administering the government of any British possession, that by reason of special circumstances it would be desirable that permission should be granted to any British ship to pass, without being previously registered, from one port or place in her Majesty's dominions to any other port or place within the same, it shall be lawful for such commissioners or governor or other person to grant a pass accordingly, and such pass shall for the time and within the limits therein mentioned have the same effect as a certificate of registry.

Power for commissioners or governor in special cases to grant a pass to a ship not registered.

99. If any person interested in any ship or any share therein is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing any thing required or permitted by this act to be made or done by such incapable person in respect of registry, then the guardian or committee, if any, of such incapable person, or, if there be none, any person appointed by any court or judge possessing jurisdiction in respect of the property of incapable persons, upon the petition of any person on behalf of such incapable person, or of any other person interested in the making such declaration or doing such thing, may make such declaration,

Provision for cases of infancy or other incapacity.

or a declaration as nearly corresponding thereto as circumstances permit, and do such thing in the name and on behalf of such incapable person ; and all acts done by such substitute shall be as effectual as if done by the person for whom he is substituted.

Liabilities of owners.

100. Whenever any person is beneficially interested, otherwise than by way of mortgage, in any ship or share therein registered in the name of some other person as owner, the person so interested shall, as well as the registered owner, be subject to all pecuniary penalties imposed by this or by any other act on owners of ships or shares therein, so nevertheless that proceedings may be taken for the enforcement of any such pecuniary penalties against both or either of the aforesaid parties, with or without joining the other of them.

Forgery.

Punishment for forgery.

Forgery.

101. Any person who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any register book, certificate of surveyor, certificate of registry, declaration of ownership, bill of sale, instrument of mortgage, certificate of mortgage or sale, or any entry or indorsement required by the second part of this act to be made in or on any of the above documents, shall for every such offence be deemed to be guilty of felony.

National Character.

National character of ship to be declared before clearance.

National Character.

102. No officer of customs shall grant a clearance or transire for any ship until the master of such ship has declared to such officer the name of the nation to which he claims that she belongs, and such officer shall thereupon inscribe such name on the clearance or transire ; and if any ship attempts to proceed to sea without such clearance or transire, any such officer may detain her until such declaration is made.

Penalties:

For unduly assuming a British character.

For concealment of British or assumption of foreign character.

For acquiring ownership if unqualified.

For false declaration of ownership.

103. The offences hereinafter mentioned shall be punishable as follows ; (that is to say,)

- (1.) If any person uses the British flag and assumes the British national character on board any ship owned in whole or in part by any persons not entitled by law to own British ships, for the purpose of making such ship appear to be a British ship, such ship shall be forfeited to her Majesty, unless such assumption has been made for the purpose of escaping capture by an enemy or by a foreign ship of war in exercise of some belligerent right ; and in any proceeding for enforcing any such forfeiture the burden of proving a title to use the British flag and assume the British national character shall lie upon the person using and assuming the same :
- (2.) If the master or owner of any British ship does or permits to be done any matter or thing, or carries or permits to be carried any papers or documents, with intent to conceal the British character of such ship from any person entitled by British law to inquire into the same, or to assume a foreign character, or with intent to deceive any such person as lastly hereinbefore mentioned, such ship shall be forfeited to her Majesty ; and the master, if he commits or is privy to the commission of the offence, shall be guilty of a misdemeanor :
- (3.) If any unqualified person, except in the case of such transmitted interests as are hereinbefore mentioned, acquires as owner any interest, either legal or beneficial, in a ship using a British flag and assuming the British character, such interest shall be forfeited to her Majesty :
- (4.) If any person, on behalf of himself or any other person or body of persons, wilfully makes a false declaration touching the qualification

of himself or such other person or body of persons to own British ships or any shares therein, the declarant shall be guilty of a misdemeanor ; and the ship or share in respect of which such declaration is made, if the same has not been forfeited under the foregoing provision, shall, to the extent of the interest therein of the person making the declaration, and, unless it is shown that he had no authority to make the same, of the parties on behalf of whom such declaration is made, be forfeited to her Majesty :

And in order that the above provisions as to forfeitures may be carried into effect, it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to seize and detain any ship which has, either wholly or as to any share therein, become subject to forfeiture as aforesaid, and to bring her for adjudication before the High Court of Admiralty in England or Ireland, or any Court having Admiralty jurisdiction in her Majesty's dominions ; and such Court may thereupon make such order in the case as it may think fit, and may award to the officer bringing in the same for adjudication such portion of the proceeds of the sale of any forfeited ship or share as it may think right.

104. No such officer as aforesaid shall be responsible, either civilly or criminally, to any person whomsoever, in respect of the seizure or detention of any ship that has been seized or detained by him in pursuance of the provisions herein contained, notwithstanding that such ship is not brought in for adjudication, or, if so brought in, is declared not to be liable to forfeiture, if it is shown to the satisfaction of the judge or Court before whom any trial relating to such ship or such seizure or detention is held that there were reasonable grounds for such seizure or detention ; but if no such grounds are shown, such judge or Court may award payment of costs and damages to any party aggrieved, and make such other order in the premises as it thinks just.

Officer not liable for any seizure made on reasonable grounds.

105. If any colours usually worn by her Majesty's ships, or any colours resembling those of her Majesty, or any distinctive national colours, except the red ensign usually worn by merchant ships, or except the union jack with a white border, or if the pendant usually carried by her Majesty's ships or any pendant in anywise resembling such pendant, are or is hoisted on board any ship or boat belonging to any subject of her Majesty without warrant for so doing from her Majesty or from the Admiralty, the master of such ship or boat or the owner thereof, if on board the same, and every other person hoisting or joining or assisting in hoisting the same, shall for every such offence incur a penalty not exceeding five hundred pounds ; and it shall be lawful for any officer on full pay in the military or naval service of her Majesty, or any British officer of the customs, or any British consular officer, to board any such ship or boat, and to take away any such jack, colours or pendant ; and such jack, colours or pendant shall be forfeited to her Majesty.

Penalty for carrying improper colours.

106. Whenever it is declared by this act that a ship belonging to any person or body corporate qualified according to this act to be owners of British ships shall not be recognized as a British ship, such ship shall not be entitled to any benefits, privileges, advantages or protection usually enjoyed by British ships, and shall not be entitled to use the British flag or assume the British national character ; but, so far as regards the payment of dues, the liability to pains and penalties, and the punishment of offences committed on board such ship or by any persons belonging to her, such ship shall be dealt with in the same manner in all respects as if she were a recognized British ship.

Effect of declaration in the act that a ship shall not be recognized as a British ship.

Evidence.

Copies of registers and declarations to be admissible in evidence, and to be *prima facie* proof of certain things.

107. Every register of or declaration made in pursuance of the second part of this act in respect of any British ship may be proved in any court of justice, or before any person having by law or by consent of parties authority to receive evidence, either by the production of the original or by an examined copy thereof, or by a copy thereof purporting to be certified under the hand of the registrar or other person having the charge of the original; which certified copies he is hereby required to furnish to any person applying at a reasonable time for the same, upon payment of one shilling for each such certified copy; and every such register or copy of a register, and also every certificate of registry of any British ship, purporting to be signed by the registrar or other proper officer, shall be received in evidence in any court of justice or before any person having by law or by consent of parties authority to receive evidence as *prima facie* proof of all the matters contained or recited in such register when the register or such copy is produced, and of all the matters contained in or indorsed on such certificate of registry, and purporting to be authenticated by the signature of a registrar, when such certificate is produced.

Saving Clause.

Saving of 3 & 4 Vict. c. 56, relating to East Indian ships.

Saving Clause.

108. Nothing in this act contained shall repeal or affect an act passed in the session of Parliament holden in the third and fourth years of the reign of her present Majesty, chapter fifty-six, intituled "An Act further to regulate the Trade of Ships built and trading within the Limits of the East India Company's Charter."

PART III.

MASTERS AND SEAMEN.

Application.

Application of Part III. of Act.

Returns for certain ships belonging to the United Kingdom.

Returns and wages of deceased seamen in certain colonial ships.

Shipping and discharging men in the United Kingdom.

Volunteering into the navy.

Provisions applicable to colonial ships.

Application.

109. The various provisions of the third part of this act shall have the following applications, unless the context or subject matter requires a different application; (that is to say.)

So much of the third part of this act as relates to the delivery or transmission of lists of crews to the registrar general of seamen shall apply to all fishing vessels belonging to the United Kingdom, whether employed exclusively on the coast of the United Kingdom or not; to all ships belonging to the Trinity House, or the commissioners of northern lighthouses, constituted as hereinafter mentioned, or the port of Dublin corporation, and to all pleasure yachts, and to the owners, masters and crews of such ships:

So much of the third part of this act as relates to the delivery and transmission of lists of crews, and to the wages and effects of deceased seamen and apprentices, shall apply to all sea-going British ships, wherever registered, of which the crews are discharged, or whose final port of destination is in the United Kingdom, and to the owners, masters and crews of such ships:

So much of the third part of this act as relates to the shipping and discharge of seamen in the United Kingdom shall apply to all sea-going British ships, wherever registered, and to the owners, masters and crews of such ships:

So much of the third part of this act as relates to seamen volunteering into the royal navy shall apply to all sea-going British ships, wherever registered, and to the owners, masters and crews of such ships, wherever the same may be:

So much of the third part of this act as relates to rights to wages and remedies for the recovery thereof; to the shipping and discharge of seamen in foreign ports; to leaving seamen abroad, and to the relief

of seamen in distress in foreign ports ; to the provisions, health and accommodation of seamen ; to the power of seamen to make complaints ; to the protection of seamen from imposition ; to discipline ; to naval courts on the high seas and abroad ; and to crimes committed abroad ; shall apply to all ships registered in any of her Majesty's dominions abroad, when such ships are out of the jurisdiction of their respective governments, and to the owners, masters and crews of such ships :

And the whole of the third part of this act shall apply to all sea-going ships registered in the United Kingdom, (except such as are exclusively employed in fishing on the coasts of the United Kingdom, and such as belong to the Trinity House, the commissioners of northern lighthouses or the port of Dublin corporation, and also except pleasure yachts,) and also to all ships registered in any British possession and employed in trading or going between any place in the United Kingdom and any place or places not situate in the possession in which such ships are registered, and to the owners, masters and crews of such ships respectively, wherever the same may be.

As to whole of
Part III. of Act.

Local Marine Boards.

*Local Marine
Boards.*

110. There shall be local marine boards for carrying into effect the provisions of this act under the superintendence of the Board of Trade at those seaports of the United Kingdom at which local marine boards have heretofore been established, and at such other places as the Board of Trade appoints for this purpose ; and each of such local marine boards shall be constituted as follows ; (that is to say,) the mayor or provost and the stipendiary magistrate or such of the mayors or provosts and stipendiary magistrates of the place (if more than one) as the Board of Trade appoints shall be a member or members *ex officio* ; the Board of Trade shall appoint four members from persons residing or having places of business at the port or within seven miles thereof ; and the owners of foreign-going ships and of home trade passenger ships registered at the port shall elect six members ; and such elections as aforesaid shall take place on the twenty-fifth day of January, one thousand eight hundred and fifty-seven, and on the twenty-fifth day of January in every third succeeding year, and such appointments as aforesaid shall take place within one month after such elections ; and upon the conclusion of such month and the constitution of a new board the functions of the then existing board shall cease, and the board consisting of the members then newly elected and appointed shall take its place ; and any occasional vacancy caused in the intervals between the general elections and appointments, by death, resignation, disqualification or otherwise, shall be filled up within one month after it occurs ; and every person elected or appointed on an occasional vacancy shall continue a member until the next constitution of a new board ; and the mayor or provost shall fix the place and mode of conducting all such elections as aforesaid, and also on occasional vacancies the day of election, and shall give at least ten days' notice thereof ; and the Board of Trade shall have power to decide any questions raised concerning any such elections.

Constitution of
Local Marine
Boards.

111. Owners of foreign-going ships and of home trade passenger ships registered at any seaport at which there is a local marine board shall have votes at the election of members of such board as follows ; (that is to say,) every registered owner of not less than two hundred and fifty tons in the whole of such shipping shall at every election have one vote for each member for every two hundred and fifty tons owned by him, so that his votes for any one member do not exceed ten : and for the purpose of ascertaining the qualification of such electors the following rules shall be observed ; (that is to say,) in the case of a ship registered in the name of one person, such person shall be deemed to be the owner, and in the case

Qualification of
voters for mem-
bers of Local
Marine Boards.

of a ship registered in distinct and several shares in the names of more persons than one, the tonnage shall be apportioned among the owners as nearly as may be in proportion to their respective shares, and each of such persons shall be deemed to be the owner of the tonnage so apportioned to him ; and in the case of a ship or shares of a ship registered jointly without severance of interest in the names of more persons than one, the tonnage shall, if it is sufficient, either alone or together with other tonnage (if any) owned by such joint owners, to give a qualification to each of them, be apportioned equally between the joint owners, and each of such joint owners shall be deemed to be the owner of the equal share so apportioned to him, but if it is not so sufficient, the whole of such tonnage shall be deemed to be owned by such one of the joint owners resident or having a place of business at the port or within seven miles thereof as is first named on the register ; and in making any such apportionment as aforesaid any portion may be struck off so as to obtain a divisible amount ; and the whole amount of tonnage so owned by each person, whether in ships or shares of or interests in ships, shall be added together, and, if sufficient, shall constitute his qualification.

**Lists of such
voters to be made.**

112. The collector or comptroller of customs in every seaport of the United Kingdom at which there is a local marine board shall, with the assistance of the registrar general of seamen, on or before the twenty-fifth day of December, in the year one thousand eight hundred and fifty-six, and in every third succeeding year, make out an alphabetical list of the persons entitled by virtue of this act to vote at the election of members of such local marine board, containing the christian name, surname and residence of each such person, and the number of votes to which he is entitled, and shall sign such list, and cause a sufficient number of copies thereof to be printed, and to be fixed on or near the doors of the custom house at such seaport for two entire weeks next after such list has been made, and shall keep true copies of such list, and permit the same to be perused by any person, without payment of any fee, at all reasonable hours during such two weeks.

**Revision of list
of voters.**

113. The mayor or provost of every seaport at which there is a local marine board, or such of them, if more than one, as is or are for the time being so appointed as aforesaid, shall at least twenty days before the twenty-fifth day of January, in the year one thousand eight hundred and fifty-seven, and in each succeeding third year, nominate two justices of the peace to revise the said lists ; and such justices shall, between the eighth and fifteenth days of January, both inclusive in the year in which they are so nominated, revise the said list at the custom house of the port, or in some convenient place near thereto, to be hired, if necessary, by the said collector or comptroller, and shall give three clear days' notice of such revision by advertising the same in some local newspaper, and by affixing a notice thereof on or near the doors of such custom house, and shall make such revision by inserting in such list the name of every person who claims to be inserted therein, and gives proof satisfactory to the said revisors of his right to have his name so inserted, and by striking out therefrom the name of every person to the insertion of which an objection is made by any other person named in such list who gives proof satisfactory to the said revisors that the name of the person so objected to ought not to have been inserted therein ; and the decision of the said revisors with respect to every such claim or objection shall be conclusive ; and the said revisors shall immediately after such revision sign their names at the foot of the list so revised ; and such list so revised shall be the register of voters at elections of members of the local marine board of such seaport for three years from the twenty-fifth day of January then next ensuing inclusive to the twenty-fourth day of January inclusive in the third succeeding year ; and the said revised list, when so signed, shall be delivered to such mayor or provost

as aforesaid of the place, who shall, if necessary, cause a sufficient number of copies thereof to be printed, and shall cause a copy to be delivered to every voter applying for the same.

114. The said collector or comptroller, if required, shall for the assistance of the said revisors in revising the said list produce to them the books containing the register of ships registered at such seaport ; and the registrar general of seamen, if required, shall also produce or transmit to such revisors such certified extracts or returns from the books in his custody as may be necessary for the same purpose.

Registers to be produced.

115. The two justices aforesaid shall certify all expenses properly incurred by any such collector or comptroller as aforesaid in making and printing the said list and in the revision thereof, and the Board of Trade shall pay the same, and also all expenses properly incurred by any such mayor or provost as aforesaid in printing the same, or in elections taking place under this act ; and the said Board may disallow any items of any such expenses as aforesaid which it deems to have been improperly incurred.

Expenses to be paid by Board of Trade.

116. Every person whose name appears on such revised list, and no other person, shall be qualified to vote at the election of members of the local marine board at such seaport to be held on the twenty-fifth day of January next after the revision of such list, and at any occasional election held at any time between that day and the next ordinary triennial election of the members of such board.

Persons on revised list qualified to vote.

117. Every male person who is according to such revised list of the voters at any seaport entitled to a vote shall be qualified to be elected a member of the local marine board of such seaport, and no other person shall be so qualified ; and if any person elected as a member after such election ceases to be an owner of such quantity of tonnage as would entitle him to a vote, he shall no longer continue to act or be considered as a member, and thereupon another member shall be elected in his place.

Qualification of members of Local Marine Boards.

118. No act of any local marine board shall be vitiated or prejudiced by reason of any irregularity in the election of any of its members, or of any error in the list of voters herein mentioned, or of any irregularity in the making or revising of such list, or by reason of any person who is not duly qualified as hereinbefore directed acting upon such board.

Error in elections not to vitiate acts done.

119. Every local marine board shall keep minutes of its proceedings, and the same shall be kept in such mode (if any) as the Board of Trade prescribes ; and such minutes, and all books or documents used or kept by any local marine board, or by any examiners, shipping masters or other officers or servants under the control of any local marine board shall be open to the inspection of the Board of Trade and its officers ; and every local marine board shall make and send to the Board of Trade such reports and returns as it requires ; but, subject as aforesaid, every local marine board may regulate the mode in which its meetings are to be held and its business conducted.

Minutes and business of Local Marine Boards.

120. If any local marine board, by reason of any election not taking place, or of the simultaneous resignation or continued non-attendance of all or the greater part of the members, or from any other cause fails to meet or to discharge its duties, the Board of Trade may in its discretion either take into its own hands the performance of the duties of such local marine board until the next triennial appointment and election thereof, or direct that a new appointment and election of such local marine board shall take place immediately.

If any Local Marine Board fails to discharge its duties, Board of Trade may assume its duties, or direct a new election.

Board of Trade,
on complaint,
may alter ar-
rangements made
by Local Marine
Boards.

121. If upon complaint made to the Board of Trade it appears to such Board that any appointments or arrangements made by any local marine board under the powers hereby given to it are not such as to meet the wants of the port, or are in any respect unsatisfactory or improper, the Board of Trade may annul, alter or rectify such appointments or arrangements in such manner as, having regard to the intentions of this act and to the wants of the port, it deems to be expedient.

Shipping Offices.

Local Marine
Boards to estab-
lish shipping
offices.

Shipping Offices.

122. In every seaport in the United Kingdom in which there is a local marine board such board shall establish a shipping office or shipping offices, and may for that purpose, subject as herein mentioned, procure the requisite premises, and appoint and from time to time remove and re-appoint superintendents of such offices, to be called shipping masters, with any necessary deputies, clerks and servants, and regulate the mode of conducting business at such offices, and shall, subject as herein mentioned, have complete control over the same; and every act done by or before any deputy duly appointed shall have the same effect as if done by or before a shipping master.

Board of Trade to
have partial con-
trol over shipping
offices.

123. The sanction of the Board of Trade shall be necessary so far as regards the number of persons so appointed by any such local marine board, and the amount of their salaries and wages and all other expenses; and the Board of Trade shall have the immediate control of such shipping offices, so far as regards the receipt and payment of money thereat; and all shipping masters, deputies, clerks and servants so appointed as aforesaid shall, before entering upon their duties, give such security (if any) for the due performance thereof as the Board of Trade requires; and if in any case the Board of Trade has reason to believe that any shipping master, deputy, clerk or servant appointed by any local marine board does not properly discharge his duties, the Board of Trade may cause the case to be investigated, and may, if it thinks fit so to do, remove him from his office, and may provide for the proper performance of his duties until another person is properly appointed in his place.

Business of such
offices generally.

124. It shall be the general business of shipping masters appointed as aforesaid—

- To afford facilities for engaging seamen by keeping registries of their names and characters;
- To superintend and facilitate their engagement and discharge in manner hereinafter mentioned;
- To provide means for securing the presence on board at the proper times of men who are so engaged;
- To facilitate the making of apprenticeships to the sea service;
- To perform such other duties relating to merchant seamen and merchant ships as are hereby or may hereafter under the powers herein contained be committed to them.

Fees to be paid
upon engage-
ments and dis-
charges.

125. Such fees, not exceeding the sums specified in the table marked P. in the schedule hereto, as are from time to time fixed by the Board of Trade, shall be payable upon all engagements and discharges effected before shipping masters as hereinafter mentioned, and the Board of Trade shall cause scales of the fees payable for the time being to be prepared and to be conspicuously placed in the shipping offices; and all shipping masters, their deputies, clerks and servants, may refuse to proceed with any engagement or discharge unless the fees payable thereon are first paid.

Masters to pay
fees, and to de-

126. Every owner or master of a ship engaging or discharging any seamen or seaman in a shipping office or before a shipping master shall pay to

the shipping master the whole of the fees hereby made payable in respect of such engagement or discharge, and may, for the purpose of in part reimbursing himself, deduct in respect of each such engagement or discharge from the wages of all persons (except apprentices) so engaged or discharged, and retain, any sums not exceeding the sums specified in that behalf in the table marked Q. in the schedule hereto : Provided that, if in any cases the sums which the owner is so entitled to deduct exceed the amount of the fee payable by him, such excess shall be paid by him to the shipping master in addition to such fee.

deduct part from wages.

Proviso as to excess.

127. Any shipping master, deputy shipping master or any clerk or servant in any shipping office, who demands or receives any remuneration whatever, either directly or indirectly, for hiring or supplying any seaman for any merchant ship, excepting the lawful fees payable under this act, shall for every such offence incur a penalty not exceeding twenty pounds, and shall also be liable to be dismissed from his office by the Board of Trade.

Penalty on shipping masters taking other remuneration.

128. The Board of Trade may, with the consent of the Commissioners of Customs, direct that at any place in which no separate shipping office is established the whole or any part of the business of the shipping office shall be conducted at the custom house, and thereupon the same shall be there conducted accordingly ; and in respect of such business such custom house shall for all purposes be deemed to be a shipping office, and the officer of customs there to whom such business is committed shall for all purposes be deemed to be a shipping master within the meaning of this act.

Business of shipping offices may be transacted at Custom Houses.

129. The Board of Trade may appoint any superintendent of or other person connected with any Sailors Home in the port of London to be a shipping master, with any necessary deputies, clerks and servants, and may appoint any office in any such home to be a shipping office ; and all shipping masters and shipping offices so appointed shall be subject to the immediate control of the Board of Trade and not of the local marine board of the port.

In London Sailors Homes may be shipping offices.

130. The Board of Trade may from time to time dispense with the transaction before a shipping master or in a shipping office of any matters required by this act to be so transacted ; and thereupon such matters shall, if otherwise duly transacted as required by law, be as valid as if transacted before a shipping master or in a shipping office.

Dispensation with shipping master's superintendence.

Examinations and Certificates of Masters and Mates.

Certificates of Masters and Mates.

131. Examinations shall be instituted for persons who intend to become masters or mates of foreign-going ships, or of home trade passenger ships, or who wish to procure certificates of competency hereinafter mentioned ; and, subject as herein mentioned, the local marine boards shall provide for the examinations at their respective ports, and may appoint and from time to time remove and re-appoint examiners to conduct the same, and may regulate the same ; and any members of the local marine board of the place where the examination is held may be present and assist at any such examination.

Examinations to be instituted for masters and mates.

132. The Board of Trade may from time to time lay down rules as to the conduct of such examinations and as to the qualifications of the applicants, and such rules shall be strictly adhered to by all examiners ; and no examiner shall be appointed unless he possesses a certificate of qualification, to be from time to time granted or renewed by the Board of Trade ; and the sanction of the Board of Trade shall be necessary, so far as regards the number of examiners to be appointed, and the amount of their remunera-

Powers of Board of Trade over examinations.

tion ; and the Board of Trade may at any time depute any of its officers to be present and assist at any examination ; and if it appears to the Board of Trade that the examinations for any two or more ports can be conducted without inconvenience by the same examiners, it may require and authorize the local marine boards of such ports to act together as one board in providing for and regulating examinations and appointing and removing examiners for such ports.

Fees to be paid by applicants for examination.

133. All applicants for examination shall pay such fees, not exceeding the sums specified in the table marked R. in the schedule hereto, as the Board of Trade directs ; and such fees shall be paid to such persons as the said Board appoints for that purpose.

Certificates of competency to be granted to those who pass.

134. Subject to the proviso hereinafter contained, the Board of Trade shall deliver to every applicant who is duly reported by the local examiners to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience, ability and general good conduct on board ship, a certificate (hereinafter called a "certificate of competency") to the effect that he is competent to act as master, or as first, second or only mate of a foreign-going ship, or as master or mate of a home trade passenger ship, as the case may be : Provided that in every case in which the Board of Trade has reason to believe such report to have been unduly made, such Board may remit the case either to the same or to any other examiners, and may require a re-examination of the applicant, or a further inquiry into his testimonials and character, before granting him a certificate.

Certificates of service to be delivered to persons who served as masters or mates before 1851, and to certain naval officers ; and certificates of service for home trade passenger ships to be delivered to persons who have served as masters or mates in such ships before 1st January, 1854.

135. Certificates of service, differing in form from certificates of competency, shall be granted as follows ; (that is to say.)

- (1.) Every person who before the first day of January, one thousand eight hundred and fifty-one, served as a master in the British merchant service, or who has attained or attains the rank of lieutenant, master, passed mate or second master, or any higher rank in the service of her Majesty or of the East India Company, shall be entitled to a certificate of service as master for foreign-going ships :
- (2.) Every person who before the first day of January, one thousand eight hundred and fifty-one, served as mate in the British merchant service shall be entitled to a certificate of service as mate for foreign-going ships :
- (3.) Every person who before the first day of January, one thousand eight hundred and fifty-four, has served as master of a home trade passenger ship shall be entitled to a certificate of service as master for home trade passenger ships :
- (4.) Every person who before the first day of January, one thousand eight hundred and fifty-four, has served as mate of a home trade passenger ship shall be entitled to a certificate of service as mate for home trade passenger ships :

And each of such certificates of service shall contain particulars of the name, place and time of birth, and of the length and nature of the previous service of the person to whom the same is delivered ; and the Board of Trade shall deliver such certificates of service to the various persons so respectively entitled thereto, upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid.

No foreign-going ship or home trade passenger ship to proceed to sea without certificates of the master and mates.

136. No foreign-going ship or home trade passenger ship shall go to sea from any port in the United Kingdom unless the master thereof, and in the case of a foreign-going ship the first and second mates or only mate (as the case may be), and in the case of a home trade passenger ship the first or only mate (as the case may be), have obtained and possess valid certi-

cates either of competency or service appropriated to their several stations in such ship, or of a higher grade; and no such ship, if of one hundred tons burden or upwards, shall go to sea as aforesaid, unless at least one officer besides the master has obtained and possesses a valid certificate appropriate to the grade of only mate therein or to a higher grade; and every person who, having been engaged to serve as master or as first or second or only mate of any foreign-going ship, or as master or first or only mate of a home trade passenger ship, goes to sea as aforesaid as such master or mate without being at the time entitled to and possessed of such a certificate as hereinbefore required, or who employs any person as master, or first, second or only mate of any foreign-going ship, or as master or first or only mate of a home trade passenger ship, without ascertaining that he is at the time entitled to and possessed of such certificate, shall for each such offence incur a penalty not exceeding fifty pounds.

137. Every certificate of competency for a foreign-going ship shall be deemed to be of a higher grade than the corresponding certificate for a home trade passenger ship, and shall entitle the lawful holder thereof to go to sea in the corresponding grade in such last-mentioned ship; but no certificate for a home trade passenger ship shall entitle the holder to go to sea as master or mate of a foreign-going ship.

Certificates for foreign-going ships available for home trade passenger ships.

138. All certificates, whether of competency or service, shall be made in duplicate, and one part shall be delivered to the person entitled to the certificate, and the other shall be kept and recorded by the registrar-general of seamen or by such other person as the Board of Trade appoints for that purpose; and the Board of Trade shall give to such registrar or such other person immediate notice of all orders made by it for cancelling, suspending, altering or otherwise affecting any certificate in pursuance of the powers herein contained; and the registrar or such other person as aforesaid shall thereupon make a corresponding entry in the record of certificates; and a copy purporting to be certified by such registrar or his assistant or by such person as aforesaid of any certificate shall be *prima facie* evidence of such certificate, and a copy purporting to be so certified as aforesaid of any entry made as aforesaid in respect of any certificate shall be *prima facie* evidence of the truth of the matters stated in such entry.

The registrar to record grants, cancellations, &c. of certificates.

Duplicates and entries to be evidence.

139. Whenever any master or mate proves to the satisfaction of the Board of Trade that he has, without fault on his part, lost or been deprived of any certificate already granted to him, the Board of Trade shall, upon payment of such fee (if any) as it directs, cause a copy of the certificate to which by the record so kept as aforesaid he appears to be entitled, to be made out and certified as aforesaid, and to be delivered to him; and any copy which purports to be so made and certified as aforesaid shall have all the effect of the original.

In case of loss a copy to be granted.

140. Every person who makes, or procures to be made, or assists in making, any false representation for the purpose of obtaining for himself or for any other person a certificate either of competency or service, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate or any official copy of any such certificate, or who fraudulently makes use of any such certificate or any copy of any such certificate which is forged, altered, cancelled, suspended or to which he is not justly entitled, or who fraudulently lends his certificate to or allows the same to be used by any other person, shall for each offence be deemed guilty of a misdemeanor.

Penalties for false representations;

for forging or altering or fraudulently using or lending any certificate.

*Apprenticeships
to Sea Service.*

Shipping masters
to assist in bind-
ing apprentices,
and may receive
fees.

Apprenticeships to the Sea Service.

141. All shipping masters appointed under this act shall, if applied to for the purpose, give to any board of guardians, overseers or other persons desirous of apprenticing boys to the sea service, and to masters and owners of ships requiring apprentices, such assistance as is in their power for facilitating the making of such apprenticeships, and may receive from persons availing themselves of such assistance such fees as may be determined in that behalf by the Board of Trade, with the concurrence, so far as relates to pauper apprentices in England, of the Poor Law Board in England, and so far as relates to pauper apprentices in Ireland, of the Poor Law Commissioners in Ireland.

Indentures of
boys bound ap-
prentices to sea
service by guar-
dians or over-
seers to be wit-
nessed by two
justices.

142. In the case of every boy bound apprentice to the sea service by any guardians or overseers of the poor, or other persons having the authority of guardians of the poor, the indentures shall be executed by the boy and the person to whom he is bound in the presence of and shall be attested by two justices of the peace, who shall ascertain that the boy has consented to be bound, and has attained the age of twelve years, and is of sufficient health and strength, and that the master to whom the boy is to be bound is a proper person for the purpose.

Indentures of ap-
prenticeship to be
exempt from
stamp duty, and
to be recorded.

143. All indentures of apprenticeship to the sea service shall be exempt from stamp duty; and all such indentures shall be in duplicate; and every person to whom any boy whatever is bound as an apprentice to the sea service in the United Kingdom shall within seven days after the execution of the indentures take or transmit the same to the registrar-general of seamen or to some shipping master; and the said registrar or shipping master shall retain and record one copy, and shall indorse on the other that the same has been recorded, and shall re-deliver the same to the master of the apprentice; and whenever any such indenture is assigned or cancelled, and whenever any such apprentice dies or deserts, the master of the apprentice shall, within seven days after such assignment, cancellation, death or desertion, if the same happens within the United Kingdom, or if the same happens elsewhere, so soon afterwards as circumstances permit, notify the same either to the said registrar of seamen, or to some shipping master, to be recorded; and every person who fails to comply with the provisions of this section shall incur a penalty not exceeding ten pounds.

Rules to govern
apprenticeship of
paupers in Great
Britain and
Ireland respec-
tively.

144. Subject to the provisions hereinbefore contained, all apprenticeships to the sea service made by any guardians or overseers of the poor or persons having the authority of guardians of the poor, shall, if made in Great Britain, be made in the same manner and be subject to the same laws and regulations as other apprenticeships made by the same persons, and if made in Ireland shall be subject to the following rules; (that is to say,)

- (1.) In every union the guardians of the poor, or other persons duly appointed to carry into execution the acts for the relief of the destitute poor and having the authority of guardians of the poor, may put out and bind as an apprentice to the sea service any boy who or whose parent or parents is or are receiving relief in such union, and who has attained the age of twelve years, and is of sufficient health and strength, and who consents to be so bound:
- (2.) If the cost of relieving any such boy is chargeable to an electoral division of a union, then (except in cases in which paid officers act in place of guardians) he shall not be bound as aforesaid unless the consent in writing of the guardians of such electoral division or of a majority of the guardians (if more than one) be first obtained, such consent to be, when possible, indorsed upon the indentures:

- (3.) The expense incurred in the binding and outfit of any such apprentice shall be charged to the union or electoral division (as the case may be) to which the boy or his parent or parents is or are chargeable at the time of his being apprenticed :
- (4.) All indentures made in any union may be sued upon by the guardians of the union or persons having the authority of guardians therein for the time being, by their name of office, and actions brought by them upon such indentures shall not abate by reason of death or change in the persons holding the office ; but no such action shall be commenced without the consent of the Irish Poor Law Commissioners :
- (5.) The amount of the costs incurred in any such action, and not recovered from the defendant therein, may be charged upon the union or electoral division (as the case may be) to which the boy or his parent or parents was or were chargeable at the time of his being apprenticed.

145. The master of every foreign-going ship shall, before carrying any apprentice to sea from any place in the United Kingdom, cause such apprentice to appear before the shipping master before whom the crew is engaged, and shall produce to him the indenture by which such apprentice is bound, and the assignment or assignments thereof (if any) ; and the name of such apprentice, with the date of the indenture and of the assignment or assignments thereof (if any), and the name of the port or ports at which the same have been registered, shall be entered on the agreement ; and for any default in obeying the provisions of this section the master shall for each offence incur a penalty not exceeding five pounds.

Apprentices and their indentures to be brought before shipping master before each voyage in a foreign-going ship.

Engagement of Seamen.

146. The Board of Trade may grant to such persons as it thinks fit licences to engage or supply seamen or apprentices for merchant ships in the United Kingdom, to continue for such periods, to be upon such terms, and to be revocable upon such conditions, as such board thinks proper.

Engagement of Seamen.

Board of Trade may license persons to procure seamen.

147. The following offences shall be punishable as hereinafter mentioned ; (that is to say,)

Penalties :

- (1.) If any person not licensed as aforesaid, other than the owner or master or a mate of a ship, or some person who is *bonâ fide* the servant and in the constant employ of the owner, or a shipping master duly appointed as aforesaid, engages or supplies any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so engaged or supplied incur a penalty not exceeding twenty pounds :
- (2.) If any person employs any unlicensed person, other than persons so excepted as aforesaid, for the purpose of engaging or supplying any seaman or apprentice to be entered on board any ship in the United Kingdom, he shall for each seaman or apprentice so engaged or supplied incur a penalty not exceeding twenty pounds, and if licensed shall in addition forfeit his licence :
- (3.) If any person knowingly receives or accepts to be entered on board any ship any seaman or apprentice who has been engaged or supplied contrary to the provisions of this act, he shall for every seaman or apprentice so engaged or supplied incur a penalty not exceeding twenty pounds.

for supplying seamen without licence ;

for employing unlicensed persons ;

for receiving seamen illegally supplied.

148. If any person demands or receives, either directly or indirectly, from any seaman or apprentice, or from any person seeking employment as a seaman or apprentice, or from any person on his behalf, any remuneration whatever, other than the fees hereby authorized, for providing him

Penalty for receiving remuneration from seamen for shipping them.

with employment, he shall for every such offence incur a penalty not exceeding five pounds.

Agreements to be made with seamen, containing certain particulars.

149. The master of every ship, except ships of less than eighty tons registered tonnage exclusively employed in trading between different ports on the coasts of the United Kingdom, shall enter into an agreement with every seaman whom he carries to sea from any port in the United Kingdom as one of his crew in the manner hereinafter mentioned; and every such agreement shall be in a form sanctioned by the Board of Trade, and shall be dated at the time of the first signature thereof, and shall be signed by the master before any seaman signs the same, and shall contain the following particulars as terms thereof; (that is to say,)

- (1.) The nature, and, as far as practicable, the duration of the intended voyage or engagement :
- (2.) The number and description of the crew, specifying how many are engaged as sailors :
- (3.) The time at which each seaman is to be on board or to begin work :
- (4.) The capacity in which each seaman is to serve :
- (5.) The amount of wages which each seaman is to receive :
- (6.) A scale of the provisions which are to be furnished to each seaman :
- (7.) Any regulations as to conduct on board, and as to fines, short allowance of provisions, or other lawful punishments for misconduct, which have been sanctioned by the Board of Trade as regulations proper to be adopted, and which the parties agree to adopt :

And every such agreement shall be so framed as to admit of stipulations, to be adopted at the will of the master and seaman in each case, as to advance and allotment of wages, and may contain any other stipulations which are not contrary to law : Provided that if the master of any ship belonging to any British possession has an agreement with his crew made in due form according to the law of the possession to which such ship belongs or in which her crew were engaged, and engages single seamen in the United Kingdom, such seamen may sign the agreement so made, and it shall not be necessary for them to sign an agreement in the form sanctioned by the Board of Trade.

Proviso as to forms for colonial ships.

For foreign-going ships such agreements, when made in the United Kingdom, except in special cases, to be made before and attested by a shipping master;

150. In the case of all foreign-going ships, in whatever part of her Majesty's dominions the same are registered, the following rules shall be observed with respect to agreements; (that is to say,)

- (1.) Every agreement made in the United Kingdom (except in such cases of agreements with substitutes as are hereinafter specially provided for) shall be signed by each seaman in the presence of a shipping master :
- (2.) Such shipping master shall cause the agreement to be read over and explained to each seaman, or otherwise ascertain that each seaman understands the same before he signs it, and shall attest each signature :
- 3 When the crew is first engaged the agreement shall be signed in duplicate, and one part shall be retained by the shipping master, and the other part shall contain a special place or form for the descriptions and signatures of substitutes or persons engaged subsequently to the first departure of the ship, and shall be delivered to the master :

To be in duplicate;

Provision for substitutes.

- (4.) In the case of substitutes engaged in the place of seamen who have duly signed the agreement, and whose services are lost within twenty-four hours of the ship's putting to sea by death, desertion or other unforeseen cause, the engagement shall, when practicable, be made before some shipping master duly appointed in the manner hereinbefore specified; and whenever such last-mentioned engagement cannot be so made, the master shall, before the ship puts to sea, if practicable, and if not, as soon afterwards as possible, cause

the agreement to be read over and explained to the seamen ; and the seamen shall thereupon sign the same in the presence of a witness, who shall attest their signatures.

151. In the case of foreign-going ships making voyages averaging less than six months in duration, running agreements with the crew may be made to extend over two or more voyages, so that no such agreement shall extend beyond the next following thirteenth day of June or thirty-first day of December, or the first arrival of the ship at her port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival ; and every person entering into such agreement, whether engaged upon the first commencement thereof or otherwise, shall enter into and sign the same in the manner hereby required for other foreign-going ships ; and every person engaged thereunder, if discharged in the United Kingdom, shall be discharged in the manner hereby required for the discharge of seamen belonging to other foreign-going ships.

Foreign-going ships making short voyages may have running agreements.

152. The master of every foreign-going ship for which such a running agreement as aforesaid is made shall, upon every return to any port in the United Kingdom before the final termination of the agreement, discharge or engage before the shipping master at such port any seaman whom he is required by law so to discharge or engage, and shall upon every such return indorse on the agreement a statement (as the case may be) either that no such discharges or engagements have been made or are intended to be made before the ship again leaves port, or that all such discharges or engagements have been duly made as hereinbefore required, and shall deliver the agreement so indorsed to the shipping master ; and any master who wilfully makes a false statement in such indorsement shall incur a penalty not exceeding twenty pounds ; and the shipping master shall also sign an indorsement on the agreement to the effect that the provisions of this act relating to such agreement have been complied with, and shall re-deliver the agreement so indorsed to the master.

Engagement and discharge of seamen in the meantime.

153. In cases in which such running agreements are made, the duplicate agreement retained by the shipping master upon the first engagement of the crew shall either be transmitted to the registrar-general of seamen immediately, or be kept by the shipping master until the expiration of the agreement, as the Board of Trade directs.

Duplicates of running agreements, how to be dealt with.

154. For the purpose of determining the fees to be paid upon the engagement and discharge of seamen belonging to foreign-going ships which have running agreements as aforesaid, the crew shall be considered to be engaged when the agreement is first signed, and to be discharged when the agreement finally terminates, and all intermediate engagements and discharges shall be considered to be engagements and discharges of single seamen.

Fees to be paid on such running agreements.

155. In the case of home trade ships, crews or single seamen may, if the master thinks fit, be engaged before a shipping master in the manner hereinbefore directed with respect to foreign-going ships ; and in every case in which the engagement is not so made, the master shall, before the ship puts to sea, if practicable, and if not as soon afterwards as possible, cause the agreement to be read over and explained to each seaman, and the seaman shall thereupon sign the same in the presence of a witness, who shall attest his signature.

In home trade ships agreement to be entered into before a shipping master or other witness.

156. In cases where several home trade ships belong to the same owner, the agreement with the seamen may, notwithstanding anything herein contained, be made by the owner instead of by the master, and the seamen may be engaged to serve in any two or more of such ships, provided that

Special agreements for home trade ships belonging to same owners.

the names of the ships and the nature of the service are specified in the agreement; but with the foregoing exception all provisions herein contained which relate to ordinary agreements for home trade ships shall be applicable to agreements made in pursuance of this section.

Penalty for shipping seamen without agreement duly executed.

157. If in any case a master carries any seaman to sea without entering into an agreement with him in the form and manner and at the place and time hereby in such case required, the master in the case of a foreign-going ship, and the master or owner in the case of a home trade ship, shall for each such offence incur a penalty not exceeding five pounds.

Changes in crew to be reported.

158. The master of every foreign-going ship of which the crew has been engaged before a shipping master shall before finally leaving the United Kingdom sign and send to the nearest shipping master a full and accurate statement in a form sanctioned by the Board of Trade of every change which takes place in his crew before finally leaving the United Kingdom, and in default shall for each offence incur a penalty not exceeding five pounds; and such statement shall be admissible in evidence, subject to all just exceptions.

Seamen engaged in the colonies to be shipped before some shipping master or officer of customs.

159. Every master of a ship who, if such ship is registered in the United Kingdom, engages any seaman in any British possession, or if such ship belongs to any British possession engages any seaman in any British possession other than that to which the ship belongs, shall, if there is at the place where such seaman is engaged any official shipping master or other officer duly appointed for the purpose of shipping seamen, engage such seaman before such shipping master, and if there is no such shipping master or officer, then before some officer of customs; and the same rules, qualifications and penalties as are hereinbefore specified with respect to the engagement of seamen before shipping masters in the United Kingdom shall apply to such engagements in a British possession; and upon every such engagement such shipping master or officer as aforesaid shall indorse upon the agreement an attestation to the effect that the same has been signed in his presence, and otherwise made as hereby required; and if in any case such attestation is not made, the burden of proving that the seaman was duly engaged as hereby required shall lie upon the master.

Seamen engaged in foreign ports to be shipped with the sanction and in the presence of the consul.

160. Every master of a British ship who engages any seaman at any place out of her Majesty's dominions in which there is a British consular officer shall, before carrying such seaman to sea, procure the sanction of such officer, and shall engage such seaman before such officer, and the same rules as are hereinbefore contained with respect to the engagement of seamen before shipping masters in the United Kingdom shall apply to such engagements made before consular officers; and upon every such engagement the consular officer shall indorse upon the agreement his sanction thereof, and an attestation to the effect that the same has been signed in his presence, and otherwise made as hereby required; and every master who engages any seaman in any place in which there is a consular officer, otherwise than as hereinbefore required, shall incur a penalty not exceeding twenty pounds; and if in any case the indorsement and attestation hereby required is not made upon the agreement, the burden of proving the engagement to have been made as hereinbefore required shall lie upon the master.

Rules as to production of agreements and certificates of competency and service of masters and mates of foreign-going ships.

161. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for foreign-going ships; (that is to say,)

(1.) The master of every foreign-going ship shall, on signing the agreement with his crew, produce to the shipping master before whom the same is signed the certificates of competency or service which the

said master and his first and second mate or only mate, as the case may be, are hereby required to possess; and upon such production being duly made, and the agreement being duly executed as hereby required, the shipping master shall sign and give to the master a certificate to that effect:

- (2.) In the case of running agreements for foreign-going ships the shipping master shall, before the second and every subsequent voyage made after the first commencement of the agreement, sign and give to the master, on his complying with the provisions herein contained with respect to such agreements, and producing to the shipping master the certificate of competency or service of any first, second or only mate then first engaged by him, a certificate to that effect:
- (3.) The master of every foreign-going ship shall, before proceeding to sea, produce the certificate so to be given to him by the shipping master as aforesaid to the collector or comptroller of customs, and no officer of customs shall clear any such ship outwards without such production; and if any such ship attempts to go to sea without a clearance, any such officer may detain her until such certificate as aforesaid is produced:
- (4.) The master of every foreign-going ship shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver such agreement to a shipping master at the place; and such shipping master shall thereupon give to the master a certificate of such delivery; and no officer of customs shall clear any foreign-going ship inwards without the production of such certificate:

And if the master of any foreign-going ship fails to deliver the agreement to a shipping master at the time and in the manner hereby directed, he shall for every default incur a penalty not exceeding five pounds.

162. The following rules shall be observed with respect to the production of agreements and certificates of competency or service for home trade ships; (that is to say.)

Rules as to production of agreements and certificates for home trade ships.

- (1.) In the case of home trade ships of more than eighty tons burden, no agreement shall extend beyond the next following thirtieth day of June or thirty-first day of December, or the first arrival of the ship at her final port of destination in the United Kingdom after such date, or the discharge of cargo consequent upon such arrival:
- (2.) The master or owner of every such ship shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to some shipping master in the United Kingdom every agreement made within the six calendar months next preceding such days respectively, and shall also in the case of home trade passenger ships produce to the shipping master the certificates of competency or service which the said master, and his first or only mate, as the case may be, are hereby required to possess:
- (3.) The shipping master shall thereupon give to the master or owner a certificate of such delivery and production; and no officer of customs shall grant a clearance or transire for any such ship as last aforesaid without the production of such certificate; and if any such ship attempts to ply or go to sea without such clearance or transire, any such officer may detain her until the said certificate is produced:

And if the agreement for any home trade ship is not delivered or transmitted by the master or owner to a shipping master at the time and in the manner hereby directed, such master or owner shall for every default incur a penalty not exceeding five pounds.

163. Every erasure, interlineation or alteration in any such agreement

Alterations to be void unless at-

tested to have been made with the consent of all parties.

with seamen as is required by the third part of this act (except additions so made as hereinbefore directed for shipping substitutes or persons engaged subsequently to the first departure of the ship) shall be wholly inoperative, unless proved to have been made with the consent of all the persons interested in such erasure, interlineation or alteration by the written attestation (if made in her Majesty's dominions) of some shipping master, justice, officer of customs or other public functionary, or (if made out of her Majesty's dominions) of a British consular officer, or, where there is no such officer, of two respectable British merchants.

Penalty for falsifying agreement.

164. Every person who fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, or makes, or assists in making, or procures to be made, any false entry in, or delivers, assists in delivering, or procures to be delivered a false copy of any agreement, shall for each such offence be deemed guilty of a misdemeanor.

Seamen not to be bound to produce agreement.

165. Any seaman may bring forward evidence to prove the contents of any agreement or otherwise to support his case, without producing or giving notice to produce the agreement or any copy thereof.

Copy of agreement to be made accessible to crew.

166. The master shall at the commencement of every voyage or engagement cause a legible copy of the agreement (omitting the signatures) to be placed or posted up in such part of the ship as to be accessible to the crew, and in default shall for each offence incur a penalty not exceeding five pounds.

Seamen discharged before voyage to have compensation.

167. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge, and without his consent, shall be entitled to receive from the master or owner, in addition to any wages he may have earned, due compensation for the damage thereby caused to him, not exceeding one month's wages, and may, on adducing such evidence as the Court hearing the case deems satisfactory of his having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

Allotment of Wages.

Regulations as to allotment notes.

Allotment of Wages.

168. All stipulations for the allotment of any part of the wages of a seaman during his absence which are made at the commencement of the voyage shall be inserted in the agreement, and shall state the amounts and times of the payments to be made; and all allotment notes shall be in forms sanctioned by the Board of Trade.

Allotment notes may be sued on summarily by certain persons and under certain conditions.

169. The wife, or the father or mother, or the grandfather or grandmother, or any child or grandchild, or any brother or sister of any seaman in whose favour an allotment note of part of the wages of such seaman is made, may, unless the seaman is shown in manner hereinafter mentioned to have forfeited or ceased to be entitled to the wages out of which the allotment is to be paid, and subject, as to the wife, to the provision hereinafter contained, sue for and recover the sums allotted by the note when and as the same are made payable, with costs, from the owner or any agent who has authorized the drawing of the note, either in the County Court or in the summary manner in which seamen are by this act enabled to sue for and recover wages not exceeding fifty pounds; and in any such proceeding it shall be sufficient for the claimant to prove that he or she is the person mentioned in the note, and that the note was given by the owner or by the master or some other authorized agent; and the seaman shall be presumed to be duly earning his wages, unless the contrary is shown to the satisfaction of the Court, either by the official statement of the change in the crew

caused by his absence made and signed by the master, as by this act is required, or by a duly certified copy of some entry in the official log book to the effect that he has left the ship, or by a credible letter from the master of the ship to the same effect, or by such other evidence, of whatever description, as the Court in its absolute discretion considers sufficient to show satisfactorily that the seaman has ceased to be entitled to the wages out of which the allotment is to be paid : provided that the wife of any seaman who deserts her children, or so misconducts herself as to be undeserving of support from her husband, shall thereupon forfeit all right to further payments of any allotment of his wages which has been made in her favour.

Discharge and Payment of Wages.

170. In the case of all British foreign-going ships, in whatever part of her Majesty's dominions the same are registered, all seamen discharged in the United Kingdom shall be discharged and receive their wages in the presence of a shipping master duly appointed under this act, except in cases where some competent Court otherwise directs ; and any master or owner of any such ship who discharges any seaman belonging thereto, or, except as aforesaid, pays his wages within the United Kingdom in any other manner, shall incur a penalty not exceeding ten pounds ; and in the case of home trade ships seamen may, if the owner or master so desires, be discharged and receive their wages in like manner.

*Discharge and
Payment of
Wages.*

Discharge from
foreign-going
ships to be made
before shipping
master.

171. Every master shall, not less than twenty-four hours before paying off or discharging any seaman, deliver to him, or, if he is to be discharged before a shipping master, to such shipping master, a full and true account in a form sanctioned by the Board of Trade of his wages and of all deductions to be made therefrom on any account whatever, and in default shall for each offence incur a penalty not exceeding five pounds ; and no deduction from the wages of any seaman (except in respect of any matter happening after such delivery) shall be allowed unless it is included in the account so delivered ; and the master shall during the voyage enter the various matters in respect of which such deductions are made, with the amounts of the respective deductions, as they occur, in a book to be kept for that purpose, and shall, if required, produce such book at the time of the payment of wages, and also upon the hearing before any competent authority of any complaint or question relating to such payments.

Master to deliver
account of wages.

172. Upon the discharge of any seaman, or upon payment of his wages, the master shall sign and give him a certificate of his discharge, in a form sanctioned by the Board of Trade, specifying the period of his service and the time and place of his discharge ; and if any master fails to sign and give to any such seaman such certificate of discharge he shall for each such offence incur a penalty not exceeding ten pounds ; and the master shall also, upon the discharge of every certificated mate whose certificate of competency or service has been delivered to and retained by him, return such certificate, and shall in default incur a penalty not exceeding twenty pounds.

On discharge,
masters to give
seamen certifi-
cates of dis-
charge, and
return certifi-
cates of compe-
tency or service
to mates.

173. Every shipping master shall hear and decide any question whatever between a master or owner and any of his crew which both parties agree in writing to submit to him ; and every award so made by him shall be binding on both parties, and shall in any legal proceeding which may be taken in the matter before any Court of justice be deemed to be conclusive as to the rights of the parties ; and no such submission or award shall require a stamp ; and any document purporting to be such submission or award shall be *prima facie* evidence thereof.

Shipping master
may decide ques-
tions which
parties refer to
him.

Master and others to produce ship's papers to shipping masters, and give evidence.

174. In any proceeding relating to the wages, claims or discharge of any seaman carried on before any shipping master under the provisions of this act, such shipping master may call upon the owner or his agent, or upon the master or any mate or other member of the crew, to produce any log books, papers or other documents in their respective possession or power relating to any matter in question in such proceeding, and may call before him and examine any of such persons being then at or near the place on any such matter; and every owner, agent, master, mate or other member of the crew who when called upon by the shipping master does not produce any such paper or document as aforesaid, if in his possession or power, or does not appear and give evidence, shall, unless he shows some reasonable excuse for such default, for each such offence incur a penalty not exceeding five pounds.

Settlement of wages.

175. The following rules shall be observed with respect to the settlement of wages; (that is to say,)

Release to be signed before and attested by the shipping master;

(1.) Upon the completion before a shipping master of any discharge and settlement, the master or owner and each seaman shall respectively in the presence of the shipping master sign in a form sanctioned by the Board of Trade a mutual release of all claims in respect of the past voyage or engagement, and the shipping master shall also sign and attest it, and shall retain and transmit it as herein directed:

To be discharge;

(2.) Such release so signed and attested shall operate as a mutual discharge and settlement of all demands between the parties thereto in respect of the past voyage or engagement:

and to be evidence;

(3.) A copy of such release certified under the hand of such shipping master to be a true copy shall be given by him to any party thereto requiring the same; and such copy shall be receivable in evidence upon any future question touching such claims as aforesaid, and shall have all the effect of the original of which it purports to be a copy:

No other receipt to be a discharge.

(4.) In cases in which discharge and settlement before a shipping master are hereby required, no payment, receipt, settlement or discharge otherwise made shall operate or be admitted as evidence of the release or satisfaction of any claim:

Voucher to be given to master, and to be evidence.

(5.) Upon any payment being made by a master before a shipping master, the shipping master shall, if required, sign and give to such master a statement of the whole amount so paid; and such statement shall as between the master and his employer be received as evidence that he has made the payments therein mentioned.

Master to make reports of character.

176. Upon every discharge effected before a shipping master the master shall make and sign in a form sanctioned by the Board of Trade a report of the conduct, character and qualifications of the persons discharged, or may state in a column to be left for that purpose in the said form that he declines to give any opinion upon such particulars or upon any of them; and the shipping master shall transmit the same to the registrar-general of seamen, or to such other person as the Board of Trade directs, to be recorded, and shall, if desired so to do by any seaman, give to him or indorse on his certificate of discharge a copy of so much of such report as concerns him; and every person who makes, assists in making, or procures to be made any false certificate or report of the service, qualifications, conduct or character of any seaman, knowing the same to be false, or who forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any such certificate or report, or who fraudulently makes use of any certificate or report or of any copy of any certificate or report which is forged or altered or does not belong to him, shall for each such offence be deemed guilty of a misdemeanor.

*Remittance of Wages and Savings Banks for Seamen.**Remittance of Wages and Savings Banks for Seamen.*

177. Facilities shall, if the Board of Trade so directs, be given for remitting the wages and other monies of seamen and apprentices to their relatives or other persons by means of money orders issued by shipping masters; and the Board of Trade may make regulations concerning such orders, and the persons by or to whom, and the mode and time in and at which, the same are to be paid, and may from time to time repeal or alter any such regulations; and all such regulations, so long as they are in force, shall be binding upon all persons interested or claiming to be interested in such orders, as well as upon the officers employed in issuing or paying the same: and no legal proceeding shall be instituted against the Board of Trade, or against any shipping master or other public officer employed about such orders, on account of any such regulations, or on account of any act done or left undone in pursuance thereof, or on account of any refusal, neglect or omission to pay any such money order, unless such refusal, neglect or omission arise from fraud or wilful misbehaviour on the part of the person against whom proceedings are instituted.

Facilities may be given for remitting seamen's wages.

178. The Board of Trade may, in any case in which it thinks fit so to do, cause the amount of any such money order as aforesaid to be paid to the person to whom or in whose favour the same may have been granted, or to his personal representatives, legatees or next of kin, notwithstanding that such order may not be in his or their possession; and in all such cases from and after such payment the Board of Trade and every shipping master or other officer of the Board of Trade shall be freed from all liability in respect of such order.

Power to pay when order is lost.

179. Every shipping master or other public officer who grants or issues any money order with a fraudulent intent shall in England or Ireland be deemed guilty of felony, and in Scotland of a high crime and offence, and shall be liable to be kept in penal servitude for a term not exceeding four years.

Penalty for issuing money orders with fraudulent intent.

180. The Commissioners for the Reduction of the National Debt, or the comptroller-general acting under them, may, on the application and recommendation of the Board of Trade, establish savings banks at such ports and places within the United Kingdom, either in the shipping offices established in such ports or elsewhere, as may appear to be expedient, and may appoint treasurers to receive from or on account of seamen, or the wives and families of seamen, desirous to become depositors in such savings banks, deposits to an amount not exceeding one hundred and fifty pounds in the whole in respect of any one account, under such regulations as may be prescribed by the said Commissioners or comptroller-general; and such regulations shall be binding on all such treasurers and depositors; and the said Commissioners may remove such treasurers, and appoint others in their place; and all the provisions of the acts now in force relating to savings banks, except so far as relates to the annual amount of deposit, shall apply to all savings banks which may be established under the authority of this act, and to such treasurers and depositors as aforesaid.

Savings banks for seamen may be established.

*Legal Rights to Wages.**Legal Rights to Wages.*

181. A seaman's right to wages and provisions shall be taken to commence either at the time at which he commences work or at the time specified in the agreement for his commencement of work or presence on board, whichever first happens.

Right to wages and provisions when to begin.

182. No seaman shall by any agreement forfeit his lien upon the ship, or be deprived of any remedy for the recovery of his wages to which he would

Seamen not to give up certain rights.

otherwise have been entitled; and every stipulation in any agreement inconsistent with any provision of this act, and every stipulation by which any seaman consents to abandon his right to wages in the case of the loss of the ship, or to abandon any right which he may have or obtain in the nature of salvage, shall be wholly inoperative.

Wages not to be dependent on the earning of freight.

183. No right to wages shall be dependent on the earning of freight; and every seaman and apprentice who would be entitled to demand and recover any wages if the ship in which he has served had earned freight, shall, subject to all other rules of law and conditions applicable to the case, be entitled to claim and recover the same, notwithstanding that freight has not been earned; but in all cases of wreck or loss of the ship, proof that he has not exerted himself to the utmost to save the ship, cargo and stores shall bar his claim.

In case of death, such wages to be paid as after mentioned.

184. If any seaman or apprentice to whom wages are due under the last preceding enactment dies before the same are paid, they shall be paid and applied in the manner hereinafter specified with regard to the wages of seamen who die during a voyage.

Rights to wages in case of termination of service by wreck or illness.

185. In cases where the service of any seaman terminates before the period contemplated in the agreement by reason of the wreck or loss of the ship, and also in cases where such service terminates before such period as aforesaid by reason of his being left on shore at any place abroad under a certificate of his unfitness or inability to proceed on the voyage granted as hereinafter mentioned, such seaman shall be entitled to wages for the time of service prior to such termination as aforesaid, but not for any further period.

Wages not to accrue during refusal to work or imprisonment.

186. No seaman or apprentice shall be entitled to wages for any period during which he unlawfully refuses or neglects to work when required, whether before or after the time fixed by the agreement for his beginning work, nor, unless the Court hearing the case otherwise directs, for any period during which he is lawfully imprisoned for any offence committed by him.

Period within which wages are to be paid.

187. The master or owner of every ship shall pay to every seaman his wages within the respective periods following; (that is to say,) in the case of a home trade ship within two days after the termination of the agreement or at the time when such seaman is discharged, whichever first happens; and in the case of all other ships (except ships employed in the southern whale fishery or on other voyages for which seamen by the terms of their agreement are wholly compensated by shares in the profits of the adventure) within three days after the cargo has been delivered, or within five days after the seaman's discharge, whichever first happens; and in all cases the seaman shall at the time of his discharge be entitled to be paid on account a sum equal to one-fourth part of the balance due to him; and every master or owner who neglects or refuses to make payment in manner aforesaid, without sufficient cause, shall pay to the seaman a sum not exceeding the amount of two days' pay for each of the days, not exceeding ten days, during which payment is delayed beyond the respective periods aforesaid, and such sum shall be recoverable as wages.

Mode of recovering Wages.

Seamen may sue for wages in a summary manner.

Mode of recovering Wages.

188. Any seaman or apprentice, or any person duly authorized on his behalf, may sue in a summary manner before any two justices of the peace acting in or near to the place at which the service has terminated, or at which the seaman or apprentice has been discharged, or at which any person upon whom the claim is made is or resides, or in Scotland either before

any such justices or before the sheriff of the county within which any such place is situated, for any amount of wages due to such seaman or apprentice not exceeding fifty pounds over and above the costs of any proceeding for the recovery thereof, so soon as the same becomes payable; and every order made by such justices or sheriff in the matter shall be final.

189. No suit or proceeding for the recovery of wages under the sum of fifty pounds shall be instituted by or on behalf of any seaman or apprentice in any Court of Admiralty or Vice-Admiralty, or in the Court of Session in Scotland, or in any superior Court of Record in her Majesty's dominions, unless the owner of the ship is adjudged bankrupt or declared insolvent, or unless the ship is under arrest or is sold by the authority of any such Court as aforesaid, or unless any justices acting under the authority of this act refer the case to be adjudged by such Court, or unless neither the owner nor master is or resides within twenty miles of the place where the seaman or apprentice is discharged or put ashore.

Restrictions on suits for wages in Superior Courts.

190. No seaman who is engaged for a voyage or engagement which is to terminate in the United Kingdom shall be entitled to sue in any Court abroad for wages, unless he is discharged with such sanction as herein required, and with the written consent of the master, or proves such ill-usage on the part of the master, or by his authority as to warrant reasonable apprehension of danger to the life of such seaman if he were to remain on board; but if any seaman on his return to the United Kingdom proves that the master or owner has been guilty of any conduct or default which but for this enactment would have entitled the seaman to sue for wages before the termination of the voyage or engagement, he shall be entitled to recover in addition to his wages such compensation not exceeding twenty pounds as the Court hearing the case thinks reasonable.

No seaman to sue for wages abroad, except in cases of discharge or of danger to life.

191. Every master of a ship shall, so far as the case permits, have the same rights, liens and remedies for the recovery of his wages which by this act or by any law or custom any seaman, not being a master, has for the recovery of his wages; and if in any proceeding in any Court of Admiralty or Vice-Admiralty touching the claim of a master to wages any right of set-off or counter claim is set up, it shall be lawful for such Court to enter into and adjudicate upon all questions and to settle all accounts then arising or outstanding and unsettled between the parties to the proceeding, and to direct payment of any balance which is found to be due.

Master to have same remedies for wages as seamen.

Relief to Seamen's Families out of Poor Rates.

192. Whenever during the absence of any seaman on a voyage his wife, children and stepchildren, or any of them, become or becomes chargeable to any union or parish in the United Kingdom, such union or parish shall be entitled to be reimbursed out of the wages of such seaman earned during such voyage any sums properly expended during his absence in the maintenance of his said relations, or any of them, so that such sums do not exceed the following proportions of his said wages; (that is to say,)

- (1.) If only one of such relations is chargeable, one-half of such wages;
- (2.) If two or more of such relations are chargeable, two-thirds of such wages:

But if during the absence of the seaman any sums have been paid by the owner to or on behalf of any such relation as aforesaid, under an allotment note given by the seaman in his, her or their favour, any such claim for reimbursement as aforesaid shall be limited to the excess (if any) of the proportion of the wages hereinbefore mentioned over the sums so paid.

Relief to Seamen's Families out of Poor Rates.

Relief to seamen's families to be chargeable on a certain proportion of their wages.

193. For the purpose of obtaining such reimbursement as aforesaid, the guardians of the union or parish, where the relief of the poor is adminis-

Notice to be given to owner, and charge to be

enforced on the return of the seaman.

tered by guardians, and the overseers of the poor of any other parish in England, and the guardians or other persons having the authority of guardians in any union in Ireland, and the inspector of the poor in Scotland, may give to the owner of the ship in which the seaman is serving a notice in writing stating the proportion of the seaman's wages upon which it is intended to make the claim, and requiring the owner to retain such proportion in his hands for a period to be therein mentioned, not exceeding twenty-one days from the time of the seaman's return to his port of discharge, and also requiring such owner immediately on such return to give to such guardians, overseers, persons or inspector notice in writing of such return; and such owner, after receiving such notice as aforesaid, shall be bound to retain the said proportion of wages, and to give notice of the seaman's return accordingly, and shall likewise give to the seaman notice of the intended claim; and the said guardians, overseers, persons or inspector may upon the seaman's return apply in a summary way in England or Ireland to any two justices having jurisdiction in such union or parish as aforesaid, and in Scotland to the sheriff of the county, for an order for such reimbursement as aforesaid; and such justices or sheriff may hear the case and may make an order for such reimbursement to the whole extent aforesaid, or to such lesser amount as they or he may under the circumstances think fit; and the owner shall pay to such guardians, overseers, persons or inspector, out of the seaman's wages, the amount so ordered to be paid by way of reimbursement, and shall pay the remainder of the said wages to the seaman; and if no such order as aforesaid is obtained within the period mentioned in the notice so to be given to the owner as aforesaid, the proportion of wages so to be retained by him as aforesaid shall immediately on the expiration of such period, and without deduction, be payable to the seaman.

Wages and Effects of deceased Seamen.

Masters to take charge of or sell effects of deceased seamen which are on board, and enter the same and wages due in the official log.

Wages and Effects of deceased Seamen.

194. Whenever any seaman or apprentice belonging to or sent home in any British ship, whether a foreign-going ship or a home trade ship, employed on a voyage which is to terminate in the United Kingdom, dies during such voyage, the master shall take charge of all money, clothes and effects which he leaves on board, and shall, if he thinks fit, cause all or any of the said clothes and effects to be sold by auction at the mast or other public auction, and shall thereupon sign an entry in the official log book containing the following particulars; (that is to say,)

- (1.) A statement of the amount of the money and a description of the effects so left by the deceased:
- (2.) In case of a sale, a description of each article sold, and the sum received for each:
- (3.) A statement of the sum due to the deceased as wages, and the total amount of the deductions (if any) to be made therefrom:

And shall cause such entry to be attested by a mate and by one of the crew.

Such effects and wages to be paid either to consul or to shipping master, with full accounts.

195. In the cases provided for by the last preceding section, the following rules shall be observed; (that is to say,)

- (1.) If the ship proceeds at once to any port in the United Kingdom without touching on the way at any foreign port, the master shall within forty-eight hours after his arrival deliver any such effects as aforesaid remaining unsold, and pay any money which he has taken charge of or received from such sale as aforesaid, and also the balance of wages due to the deceased, to the shipping master at the port of destination in the United Kingdom:
- (2.) If the ship touches and remains for forty-eight hours at some foreign port or at some port in her Majesty's dominions abroad before coming to any port in the United Kingdom, the master shall report

the case to the British consular officer or officer of customs there, as the case may be, and shall give to such officer any information he requires as to the destination of the ship and probable length of the voyage; and such officer may thereupon, if he considers it expedient so to do, require the said effects, money and wages to be delivered and paid to him, and shall upon such delivery and payment give to the master a receipt, and the master shall within forty-eight hours after his arrival at his port of destination in the United Kingdom produce the same to the shipping master there; and such consular officer or officer of customs shall in such case indorse and certify upon the agreement with the crew such particulars with respect to such delivery and payment as the Board of Trade requires:

- (3.) If such officer as aforesaid does not require such payment and delivery to be made to him, the master shall take charge of the said effects, money and wages, and shall within forty-eight hours after his arrival at his port of destination in the United Kingdom deliver and pay the same to the shipping master there:
- (4.) The master shall in all cases in which any seaman or apprentice dies during the progress of a voyage or engagement give to the Board of Trade, or to such officer or shipping master as aforesaid, an account in such form as they respectively require of the effects, money and wages so to be delivered and paid; and no deductions claimed in such account shall be allowed unless verified, if there is any official log book, by such entry therein as hereinbefore required, and also by such other vouchers (if any) as may be reasonably required by the Board of Trade, or by the officer or shipping master to whom the account is rendered:
- (5.) Upon due compliance with such of the provisions of this section as relate to acts to be done at the port of destination in the United Kingdom, the shipping master shall grant to the master a certificate to that effect, and no officer of customs shall clear inwards any foreign-going ship without the production of such certificate.

196. If any master fails to take such charge of the money or other effects of a seaman or apprentice dying during a voyage, or to make such entries in respect thereof, or to procure such attestation to such entries, or to make such payment or delivery of any money, wages or effects of any seaman or apprentice dying during a voyage, or to give such account in respect thereof as hereinbefore respectively directed, he shall be accountable for the money, wages and effects of the seaman or apprentice to the Board of Trade, and shall pay and deliver the same accordingly; and such master shall in addition for every such offence incur a penalty not exceeding treble the value of the money or effects not accounted for, or if such value is not ascertained, not exceeding fifty pounds; and if any such money, wages or effects are not duly paid, delivered or accounted for by the master, the owner of the ship shall pay, deliver and account for the same, and such money and wages and the value of such effects shall be recoverable from him accordingly; and if he fails to account for and pay the same, he shall, in addition to his liability for the said money and value, incur the same penalty which is hereinbefore mentioned as incurred by the master for the like offence; and all money, wages and effects of any seaman or apprentice dying during a voyage shall be recoverable in the same Courts and by the same modes of proceeding by which seamen are hereby enabled to recover wages due to them.

Penalties for not taking charge of, remitting, or accounting for such monies and effects.

197. If any such seaman or apprentice as last aforesaid dies abroad at any place either in or out of her Majesty's dominions leaving any money or effects not on board his ship, the chief officer of customs or the British consular officer at or nearest to the place, as the case may be, shall claim

Officers of customs and consuls to take charge of effects left by seamen abroad, and to remit the

same and their wages to Board of Trade.

and take charge of such money and effects ; and such officer shall, if he thinks fit, sell all or any of such effects, or any effects of any deceased seaman or apprentice delivered to him under the provisions hereinbefore contained ; and every such officer shall, quarterly or at such other times as the Board of Trade directs, remit to her Majesty's Paymaster-General all monies belonging to or arising from the sale of the effects of or paid as the wages of any deceased seamen or apprentices which have come to his hands under the provisions hereinbefore contained, and shall render such accounts in respect thereof as the Board of Trade requires.

Wages and effects of seamen dying at home to be paid in certain cases to Board of Trade.

198. Whenever any seaman or apprentice dies in the United Kingdom, and is at the time of his death entitled to claim from the master or owner of any ship in which he has served any unpaid wages or effects, such master or owner shall pay and deliver or account for the same to the shipping master at the port where the seaman or apprentice was discharged or was to have been discharged, or to the Board of Trade, or as it directs.

If less than 50*l*. wages and property of deceased seamen may be paid over without probate or administration to the persons entitled.

199. If the money and effects of any deceased seaman or apprentice paid, delivered or remitted to the Board of Trade or its agents, including the monies received for any part of the said effects which have been sold either before delivery to the Board of Trade or by its direction, do not exceed in value the sum of fifty pounds, then, subject to the provisions hereinafter contained, and to all such deductions for expenses incurred in respect of the seaman or apprentice or of his said money and effects as the said Board thinks proper to allow, the said Board may, if it thinks fit so to do, pay and deliver the said money and effects either to any claimants who can prove themselves to the satisfaction of the said Board either to be his widow or children, or to be entitled to the effects of the deceased under his will (if any), or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, or to be entitled to procure probate or take out letters of administration or confirmation, although no probate or letters of administration or confirmation have been taken out, and shall be thereby discharged from all further liability in respect of the money and effects so paid and delivered, or may, if it thinks fit so to do, require probate or letters of administration or confirmation to be taken out, and thereupon pay and deliver the said money and effects to the legal personal representatives of the deceased ; and all claimants to whom such money or effects are so paid or delivered shall apply the same in due course of administration ; and if such money and effects exceed in value the sum of fifty pounds, then, subject to the provisions hereinafter contained and to deduction for expenses, the Board of Trade shall pay and deliver the same to the legal personal representatives of the deceased.

Mode of payment under wills made by seamen.

200. In cases where the deceased seaman or apprentice has left a will the Board of Trade shall have the following powers ; (that is say,)

- (1.) It may in its discretion refuse to pay or deliver any such wages or effects as aforesaid to any person claiming to be entitled thereto under a will made on board ship unless such will is in writing, and is signed or acknowledged by the testator in the presence of the master or first or only mate of the ship, and is attested by such master or mate :
- (2.) It may in its discretion refuse to pay or deliver any such wages or effects as aforesaid to any person not being related to the testator by blood or marriage who claims to be entitled thereto under a will made elsewhere than on board ship, unless such will is in writing, and is signed or acknowledged by the testator in the presence of two witnesses, one of whom is some shipping master appointed under this act, or some minister or officiating minister or curate of the place in which the same is made, or, in a place where there are no such persons, some justice of the peace, or some British consular

officer, or some officer of customs, and is attested by such witnesses :

Whenever any claim made under a will is rejected by the Board of Trade on account of the said will not being made and attested as hereinbefore required, the wages and effects of the deceased shall be dealt with as if no will had been made.

201. The following rules shall be observed with respect to creditors of deceased seamen and apprentices ; (that is to say.)

Provision for payment of just claims by creditors, and for preventing fraudulent claims.

- (1.) No such creditor shall be entitled to claim from the Board of Trade the wages or effects of any such seaman or apprentice or any part thereof by virtue of letters of administration taken out by him, or by virtue of confirmation in Scotland as executor creditor :
- (2.) No such creditor shall be entitled by any means whatever to payment of his debt out of such wages and effects, if the debt accrued more than three years before the death of the deceased, or if the demand is not made within two years after such death :
- (3.) Subject as aforesaid, the steps to be taken for procuring payment of such debt shall be as follows (that is to say) : Every person making a demand as creditor shall deliver to the Board of Trade an account in writing in such form as it requires, subscribed with his name, stating the particulars of his demand and the place of his abode, and verified by his declaration made before a justice :
- (4.) If before such demand is made any claim to the wages and effects of the deceased made by any person interested therein as his widow or child, or under a will or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, has been allowed, the Board of Trade shall give notice to the creditor of the allowance of such person's claim, and the creditor shall thereupon have the same rights and remedies against such person as if he or she had received the said wages and effects as the legal personal representative of the deceased :
- (5.) If no claim by any such person has been allowed, the Board of Trade shall proceed to investigate the creditor's account, and may for that purpose require him to prove the same, and to produce all books, accounts, vouchers and papers relating thereto ; and if by such means the creditor duly satisfies the Board of Trade of the justice of the demand, either in the whole or in part, the same shall be allowed and paid accordingly, so far as the assets in the hands of the Board of Trade will extend for that purpose, and such payment shall discharge the Board of Trade from all further liability in respect of the money so paid ; but if such Board is not so satisfied, or if such books, accounts, vouchers or papers as aforesaid are not produced, and no sufficient reason is assigned for not producing them, the demand shall be disallowed :
- (6.) In any case whatever the Board of Trade may delay the investigation of any demand made by a creditor for the payment of his debt for one year from the time of the first delivery of the demand ; and if in the course of that time a claim to the wages and effects of the deceased is made and substantiated as hereinbefore required by any person interested therein as a widow or child, or under a will, or under the statutes for the distribution of the effects of intestates, or under any other statute, or at common law, the Board of Trade may pay and deliver the same to such person ; and thereupon the creditor shall have the same rights and remedies against such person as if he or she had received the same as the legal personal representative of the deceased.

202. In cases of wages or effects of deceased seamen or apprentices received by the Board of Trade to which no claim is substantiated within

Mode of dealing with unclaimed wages of deceased seamen.

six years after the receipt thereof by such Board, it shall be in the absolute discretion of such Board, if any subsequent claim is made, either to allow or to refuse the same; and, subject to the provision hereinafter contained, the Board of Trade shall from time to time pay any monies arising from the unclaimed wages and effects of deceased seamen, which in the opinion of such Board it is not necessary to retain for the purpose of satisfying claims, into the receipt of her Majesty's exchequer in such manner as the Treasury directs, and such monies shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Punishment for forgery and false representations in order to obtain wages and property of deceased seamen.

203. Every person who, for the purpose of obtaining, either for himself or for another, any money or effects of any deceased seaman or apprentice, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document purporting to show or assist in showing a right to such wages or effects, and every person who for the purpose aforesaid makes use of any such forged or altered document as aforesaid, or who for the purpose aforesaid gives or makes or procures to be given or made, or assists in giving or making or procuring to be given or made, any false evidence or representation, knowing the same to be false, shall be punishable with penal servitude for a term not exceeding four years, or with imprisonment with or without hard labour for any period not exceeding two years, or if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

Effects of seamen discharged from navy to be disposed of by accountant-general of navy.

204. In the case of seamen invalidated or discharged from any of her Majesty's ships, and sent home in merchant ships, any monies or effects belonging to them which are paid, remitted or delivered to the Board of Trade, or its agents, under the provisions hereinbefore contained, shall be paid over and disposed of in such manner as the Accountant-General of her Majesty's Navy directs.

Leaving Seamen abroad.

Leaving Seamen abroad.

On discharge of seamen abroad, by sale of ship or otherwise, certificates of discharge to be given, and seamen to be sent home at expense of owner.

205. Whenever any British ship is transferred or disposed of at any place out of her Majesty's dominions, and any seaman or apprentice belonging thereto does not in the presence of some British consular officer, or, if there is no such consular officer there, in the presence of one or more respectable British merchants residing at the place, and not interested in the said ship, signify his consent in writing to complete the voyage if continued, and whenever the service of any seaman or apprentice belonging to any British ship terminates at any place out of her Majesty's dominions, the master shall give to each such seaman or apprentice a certificate of discharge in the form sanctioned by the Board of Trade as aforesaid, and in the case of any certificated mate whose certificate he has retained shall return such certificate to him, and shall also, besides paying the wages to which such seaman or apprentice is entitled, either provide him with adequate employment on board some other British ship bound to the port in her Majesty's dominions at which he was originally shipped, or to such other port in the United Kingdom as is agreed upon by him, or furnish the means of sending him back to such port, or provide him with a passage home, or deposit with such consular officer or such merchant or merchants as aforesaid such a sum of money as is by such officer or merchants deemed sufficient to defray the expenses of his subsistence and passage home; and such consular officer or merchants shall indorse upon the agreement of the ship which the seaman or apprentice is leaving the particulars of such payment, provision or deposit; and if the master refuses or neglects to comply with the requirements of this section such expenses as last aforesaid, if defrayed by such consular officer or by any other person, shall, unless such seaman or apprentice has been guilty of barratry, be a charge

upon the ship to which such seaman or apprentice belonged and upon the owner for the time being thereof, and may be recovered against such owners, with costs, at the suit of the consular officer or other person defraying such expenses, or, in case the same has been allowed to the consular officer out of the public monies, as a debt due to her Majesty either by ordinary process of law, or in the manner in which seamen are hereby enabled to recover wages; and such expenses, if defrayed by the seaman or apprentice, shall be recoverable as wages due to him.

206. If the master or any other person belonging to any British ship wrongfully forces on shore and leaves behind, or otherwise wilfully and wrongfully leaves behind, in any place, on shore or at sea, in or out of her Majesty's dominions, any seaman or apprentice belonging to such ship before the completion of the voyage for which such person was engaged or the return of the ship to the United Kingdom, he shall for each such offence be deemed guilty of a misdemeanor.

Forcing seamen on shore a misdemeanor.

207. If the master of any British ship does any of the following things; (that is to say,)

No seamen to be discharged or left abroad without certificate of some functionary.

- (1.) Discharges any seaman or apprentice in any place situate in any British possession abroad (except the possession in which he was shipped), without previously obtaining the sanction in writing indorsed on the agreement of some public shipping master or other officer duly appointed by the local government in that behalf, or (in the absence of any such functionary) of the chief officer of customs resident at or near the place where the discharge takes place:
- (2.) Discharges any seaman or apprentice at any place out of her Majesty's dominions without previously obtaining the sanction so indorsed as aforesaid of the British consular officer there, or (in his absence) of two respectable merchants resident there:
- (3.) Leaves behind any seaman or apprentice at any place situate in any British possession abroad on any ground whatever, without previously obtaining a certificate in writing so indorsed as aforesaid from such officer or person as aforesaid, stating the fact and the cause thereof, whether such cause be unfitness or inability to proceed to sea, or desertion or disappearance:
- (4.) Leaves behind any seaman or apprentice at any place out of her Majesty's dominions, on shore or at sea, on any ground whatever, without previously obtaining the certificate indorsed in manner and to the effect last aforesaid of the British consular officer there, or (in his absence) of two respectable merchants, if there is any such at or near the place where the ship then is:

He shall for each such default be deemed guilty of a misdemeanor; and the said functionaries shall and the said merchants may examine into the grounds of such proposed discharge, or into the allegation of such unfitness, inability, desertion or disappearance as aforesaid, in a summary way, and may for that purpose, if they think fit so to do, administer oaths, and may either grant or refuse such sanction or certificate as appears to them to be just.

208. Upon the trial of any information, indictment or other proceeding against any person for discharging or leaving behind any seaman or apprentice, contrary to the provisions of this act, it shall lie upon such person either to produce the sanction or certificate hereby required, or to prove that he had obtained the same previously to having discharged or left behind such seaman or apprentice, or that it was impracticable for him to obtain such sanction or certificate.

Proof of such certificate to be upon the master.

209. Every master of any British ship who leaves any seaman or apprentice on shore at any place abroad in or out of her Majesty's dominions,

Wages to be paid when seamen are left behind on

ground of inability.

under a certificate of his unfitness or inability to proceed on the voyage, shall deliver to one of the functionaries aforesaid or (in the absence of such functionaries) to the merchants by whom such certificate is signed, or, if there be but one respectable merchant resident at such place, to him, a full and true account of the wages due to such seaman or apprentice, such account when delivered to a consular officer to be in duplicate, and shall pay the same either in money or by a bill drawn upon the owner; and in the case of every bill so drawn, such functionary, merchants or merchant as aforesaid, shall by indorsement certify thereon that the same is drawn for money due on account of a seaman's wages, and shall also indorse the amount for which such bill is drawn, with such further particulars in respect of the case as the Board of Trade requires, upon the agreement of the ship; and every such master as aforesaid who refuses or neglects to deliver a full account of such wages, and pay the amount thereof in money or by bill, as hereinbefore required, shall for every such offence or default be liable, in addition to the payment of the wages, to a penalty not exceeding ten pounds; and every such master who delivers a false account of such wages shall for every such offence, in addition to the payment of the wages, incur a penalty not exceeding twenty pounds.

Such wages to be treated as money due to the seamen, subject to payment of expense of their subsistence and passage home.

210. Every such payment as last aforesaid, whether by bill or in money, shall, if made in any British possession, be made to the seaman or apprentice himself, and, if made out of her Majesty's dominions, to the consular officer, who shall, if satisfied with the account, indorse on one of the duplicates thereof a receipt for the amount paid or bill delivered, and shall return the same to the master; and the master shall, within forty-eight hours after his return to his port of destination in the United Kingdom, deliver the same to the shipping master there; and the consular officer shall retain the other duplicate of the said account, and shall, if the seaman or apprentice subsequently obtains employment at or otherwise quits the port, deduct out of the sum received by him as aforesaid any expenses which have been incurred by him in respect of the subsistence of the seaman or apprentice under the provisions herein contained, except such as the master or owner of the ship is hereby required to pay, and shall pay the remainder to the seaman or apprentice, and shall also deliver to him an account of the sums so received and expended on his behalf; and shall, if the seaman or apprentice dies before his ship quits the port, deal with the same in the manner hereinafter specified in that behalf, and shall, if the seaman or apprentice is sent home at the public expense under the provisions herein contained, account for the amount received to the Board of Trade; and such amount shall, after deducting any expenses which have been duly incurred in respect of such seaman or apprentice, except such as the master or owner of the ship is hereby required to pay, be dealt with as wages to which he is entitled, and shall be paid accordingly.

Distressed seamen found abroad may be relieved and sent home at the public expense.

211. The governors, consular officers and other officers of her Majesty in foreign countries shall, and in places where there are no such governors or officers any two resident British merchants may, provide for the subsistence of all seamen or apprentices, being subjects of her Majesty, who have been shipwrecked, discharged or left behind at any place abroad, whether from any ship employed in the merchant service or from any of her Majesty's ships, or who have been engaged by any person acting either as principal or agent to serve in any ship belonging to any foreign power or to the subject of any foreign state, and who are in distress in any place abroad, until such time as they are able to provide them with a passage home, and for that purpose shall cause such seamen or apprentices to be put on board some ship belonging to any subject of her Majesty bound to any port of the United Kingdom, or to the British possession to which they belong, (as the case requires,) which is in want of men to make up its complement, and in default of any such ship shall provide them with a passage home as

soon as possible in some ship belonging to a subject of her Majesty so bound as aforesaid, and shall indorse on the agreement of any ship on board of which any seaman or apprentice is so taken or sent the name of every person so sent on board thereof, with such particulars concerning the case as the Board of Trade requires, and shall be allowed for the subsistence of any such seaman or apprentice such sum *per diem* as the Board of Trade from time to time appoints; and the amount due in respect of such allowance shall be paid out of any monies applicable to the relief of distressed British seamen, and granted by Parliament for the purpose, on the production of the bills of the disbursements, with the proper vouchers.

212. The master of every British ship so bound as aforesaid shall receive and afford a passage and subsistence to all seamen or apprentices whom he is required to take on board his ship under the provisions hereinbefore contained, not exceeding one for every fifty tons burden, and shall during the passage provide every such seaman or apprentice with a proper berth or sleeping place effectually protected against sea and weather; and on the production of a certificate signed by any governor, consular officer or merchants by whose directions any such seaman or apprentice was received on board, specifying the number and names of such seamen or apprentices, and the time when each of them respectively was received on board, and on a declaration made by such person before a justice, and verified by the registrar-general of seamen, stating the number of days during which each seaman or apprentice received subsistence and was provided for as aforesaid on board his ship, and stating also the number of men and boys forming the complement of his crew, and the number of seamen and apprentices employed on board his ship during such time, and every variation (if any) of such number, such person shall be entitled to be paid out of the said monies applicable to the relief of distressed British seamen in respect of the subsistence and passage of every seaman or apprentice so conveyed, subsisted and provided for by him exceeding the number (if any) wanted to make up the complement of his crew, such sum *per diem* as the Board of Trade from time to time appoints; and if any person having charge of any such ship fails or refuses to receive on board his ship, or to give a passage home, or subsistence to, or to provide for any such seaman or apprentice as aforesaid, contrary to the provisions of this act, he shall incur a penalty not exceeding one hundred pounds for each seaman or apprentice with respect to whom he makes such default or refusal.

Masters of British ships compelled to take them.

213. If any seaman or apprentice belonging to any British ship is discharged or left behind at any place out of the United Kingdom, without full compliance on the part of the master with all the provisions in that behalf in this act contained, and becomes distressed and is relieved under the provisions of this act, or if any subject of her Majesty, after having been engaged by any person (whether acting as principal or agent) to serve in any ship belonging to any foreign power, or to the subject of any foreign power, becomes distressed and is relieved as aforesaid the wages (if any) due to such seaman or apprentice, and all expenses incurred for his subsistence, necessary clothing, conveyance home, and burial, in case he should die abroad before reaching home, shall be a charge upon the ship, whether British or foreign, to which he so belonged as aforesaid; and the Board of Trade may in the name of her Majesty (besides suing for any penalties which may have been incurred) sue for and recover the said wages and expenses, with costs, either from the master of such ship as aforesaid, or from the person who is owner thereof for the time being, or, in the case of such engagement as aforesaid for service in a foreign ship, from such master or owner, or from the person by whom such engagement was so made as aforesaid; and such sums shall be recoverable either in the same manner as other debts due to her Majesty, or in the same manner and by the same form and process in which wages due to the seaman.

Power to sue for the amount advanced for the relief of seamen left abroad.

would be recoverable by him; and in any proceedings for that purpose production of the account (if any) to be furnished as hereinbefore is provided in such cases, together with proof of payment by the Board of Trade or by the paymaster-general of the charges incurred on account of any such seaman, apprentice or other person, shall be sufficient evidence that he was relieved, conveyed home or buried (as the case may be) at her Majesty's expense.

Volunteering into the Navy.

Seamen allowed to leave their ships in order to enter the navy.

214. Any seaman may leave his ship for the purpose of forthwith entering into the naval service of her Majesty, and such leaving his ship shall not be deemed a desertion therefrom, and shall not render him liable to any punishment or forfeiture whatever; and all stipulations introduced into any agreement whereby any seaman is declared to incur any forfeiture or be exposed to any loss in case he enters into her Majesty's naval service shall be void, and every master or owner who causes any such stipulation to be so introduced shall incur a penalty not exceeding twenty pounds.

Volunteering into the Navy.

Clothes to be delivered at once.

Wages to be given to the Queen's officer on account of the seamen.

215. Whenever any seaman, without having previously committed any act amounting to and treated by the master as desertion, leaves his ship in order to enter into the naval service of her Majesty and is received into such service, the master shall deliver to him his clothes and effects on board such ship, and shall pay the proportionate amount of his wages down to the time of such entry, subject to all just deductions as follows; (that is to say,) the master of the said ship shall pay the same to the officer authorized to receive such seaman into her Majesty's service, either in money or by bill drawn upon the owner and payable at sight to the order of the accountant-general of the navy; and the receipt of such officer shall be a discharge for the money or bill so given; and such bill shall be exempt from stamp duty; and if such wages are paid in money, such money shall be credited in the muster book of the ship to the account of the said seaman; and if such wages are paid by bill, such bill shall be noted in the said muster book and shall be sent to the said accountant-general, who shall present the same or cause the same to be presented for payment, and shall credit the produce thereof to the account of the said seaman; and such money or produce (as the case may be) shall not be paid to the said seaman until the time at which he would have been entitled to receive the same if he had remained in the service of the ship which he had so quitted as aforesaid; and if any such bill is not duly paid when presented, the said accountant-general or the seaman on whose behalf the same is given may sue thereon or may recover the wages due by all or any of the means by which wages due to merchant seamen are recoverable; and if upon any seaman leaving his ship in the manner and for the purpose aforesaid, the master fails to deliver his clothes and effects, or to pay his wages as hereinbefore required, he shall, in addition to his liability to pay and deliver the same, incur a penalty not exceeding twenty pounds; provided that no officer who receives any such bill as aforesaid shall be subject to any liability in respect thereof, except for the safe custody thereof until sent to the said accountant-general as aforesaid.

Repayment to owner of advance paid and not duly earned.

216. If upon any seaman leaving his ship for the purpose of entering the naval service of her Majesty, the owner or master of such ship shows to the satisfaction of the Admiralty that he has paid or properly rendered himself liable to pay an advance of wages to or on account of such seaman, and that such seaman has not at the time of quitting his ship duly earned such advance by service therein, and, in the case of such liability as aforesaid, if such owner or master actually satisfies the same, it shall be lawful for the Admiralty to pay to such owner or master so much of such advance as has not been duly earned, and to deduct the sum so paid from the wages of the seaman earned or to be earned in the naval service of her Majesty.

217. If, in consequence of any seaman so leaving his ship without the consent of the master or owner thereof, it becomes necessary for the safety and proper navigation of the said ship to engage a substitute or substitutes, and if the wages or other remuneration paid to such substitute or substitutes for subsequent service exceed the wages or remuneration which would have been payable to the said seaman under his agreement for similar service, the master or owner of the said ship may apply to the registrar of the High Court of Admiralty in England for a certificate authorizing the repayment of such excess; and such application shall be in such form, and shall be accompanied by such documents, and by such statements, whether on oath or otherwise, as the judge of the said Court from time to time directs.

If new seamen are engaged instead of the original seamen, the owner may apply for repayment of any extra expense he has been put to.

218. The said registrar shall, upon receiving any such application as aforesaid, give notice thereof in writing, and of the sum claimed, to the secretary to the Admiralty, and shall proceed to examine the said application, and may call upon the registrar-general of seamen to produce any papers in his possession relating thereto, and may call for further evidence; and if the whole of the claim appears to him to be just, he shall give a certificate accordingly; but if he considers that such claim or any part thereof is not just, he shall give notice of such his opinion in writing under his hand to the person making the said application or his attorney or agent; and if within sixteen days from the giving of such notice such person does not leave or cause to be left at the office of the registrar of the said Court a written notice demanding that the said application shall be referred to the judge of the said Court, then the said registrar shall finally decide thereon, and certify accordingly; but if such notice be left as aforesaid, then the said application shall stand referred to the said judge in his chambers, and his decision thereon shall be final, and the said registrar shall certify the same accordingly; and the said registrar and judge respectively shall in every proceeding under this act have full power to administer oaths, and to exercise all the ordinary powers of the Court, as in any other proceeding within its jurisdiction; and the said registrar or judge (as the case may be) may, if he thinks fit, allow for the costs of any proceeding under this act any sum not exceeding five pounds for each seaman so quitting his ship as aforesaid; and such sum shall be added to the sum allowed, and shall be certified by the said registrar accordingly.

Application how to be decided on, and amount of repayment how to be ascertained.

219. Every certificate so given shall be sent by post or otherwise to the person making the application, his attorney or agent, and a copy thereof shall be sent to the accountant-general of the navy; and such accountant-general shall, upon delivery to him of the said original certificate, together with a receipt in writing purporting to be a receipt from the master or owner making the application, pay to the person delivering the same out of the monies applicable to the naval service of her Majesty, and granted by Parliament for the purpose, the amount mentioned in such certificate; and such certificate and receipt shall absolutely discharge the said accountant-general and her Majesty from all liability in respect of the money so paid or of the said application.

Accountant-general to pay sums when ascertained.

220. Every person who, in making or supporting any such application as aforesaid to the registrar of the High Court of Admiralty, forges, assists in forging, or procures to be forged, or fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every person who in making or supporting any such application presents or makes use of any such forged or altered document, or who in making or supporting any such application makes or gives, or assists in making or giving, or procures to be made or given, any false evidence or representation, knowing the same to be false, shall be deemed guilty of a misdemeanor.

Penalty for forgery and false representations in support of such applications.

*Provisions,
Health and
Accommodation.*

Survey of provisions and water on complaint made.

Provisions, Health and Accommodation.

221. Any three or more of the crew of any British ship may complain to any officer in command of any of her Majesty's ships, or any British consular officer, or any shipping master, or any chief officer of customs, that the provisions or water for the use of the crew are at any time of bad quality, unfit for use, or deficient in quantity; and such officer may thereupon examine the said provisions or water, or cause them to be examined; and if on examination such provisions or water are found to be of bad quality and unfit for use, or to be deficient in quantity, the person making such examination shall signify the same in writing to the master of the ship; and if such master does not thereupon provide other proper provisions or water in lieu of any so signified to be of a bad quality and unfit for use, or does not procure the requisite quantity of any so signified to be insufficient in quantity, or uses any provisions or water which have been so signified as aforesaid to be of a bad quality and unfit for use, he shall in every such case incur a penalty not exceeding twenty pounds; and upon every such examination as aforesaid the officers making or directing the same shall enter a statement of the result of the examination in the official log, and shall send a report thereof to the Board of Trade, and such report, if produced out of the custody of such Board or its officers, shall be received in evidence in any legal proceeding.

Forfeiture for frivolous complaint.

222. If the officer to whom any such complaint as last aforesaid is made certifies in such statement as aforesaid that there was no reasonable ground for such complaint, each of the parties so complaining shall be liable to forfeit to the owner out of his wages a sum not exceeding one week's wages.

Allowance for short or bad provisions.

223. In the following cases, (that is to say,)

- (1.) If during the voyage the allowance of any of the provisions which any seaman has by his agreement stipulated for is reduced (except in accordance with any regulations for reduction by way of punishment contained in the agreement, and also except for any time during which such seaman wilfully and without sufficient cause refuses or neglects to perform his duty, or is lawfully under confinement for misconduct, either on board or on shore);
- (2.) If it is shown that any of such provisions are or have during the voyage been bad in quality and unfit for use;

The seaman shall receive by way of compensation for such reduction or bad quality, according to the time of its continuance, the following sums, to be paid to him in addition to and to be recoverable as wages; (that is to say,)

- (1.) If his allowance is reduced by any quantity not exceeding one third of the quantity specified in the agreement, a sum not exceeding fourpence a day;
- (2.) If his allowance is reduced by more than one third of such quantity, eightpence a day;
- (3.) In respect of such bad quality as aforesaid, a sum not exceeding one shilling a day;

But if it is shown to the satisfaction of the Court before which the case is tried that any provisions the allowance of which has been reduced could not be procured or supplied in proper quantities, and that proper and equivalent substitutes were supplied in lieu thereof, the Court shall take such circumstances into consideration and shall modify or refuse compensation as the justice of the case may require.

Medicines, lime or lemon juice, sugar and vinegar to be provided and

224. The following rules shall be observed with respect to medicines, medical stores, and anti-scorbutics; (that is to say,)

- (1.) The Board of Trade shall from time to time issue and cause to be

published a scale of medicines and medical stores suitable to accidents and diseases arising on sea voyages :

kept on board
certain ships.

- (2.) The owner of every ship navigating between the United Kingdom and any place out of the same shall provide and cause to be constantly kept on board such ship a supply of such medicines and medical stores in accordance with the said scale :
- (3.) The master or owner of every foreign-going ship (except those bound to European ports or to ports in the Mediterranean Sea, and also except such ships or classes of ships bound to ports on the Eastern coast of America north of the thirty-fifth degree of north latitude and to any islands or places in the Atlantic Ocean north of the same limit, as the Board of Trade may from time to time exempt from this enactment), shall also provide and cause to be kept on board such ship a sufficient quantity of lime or lemon juice, or of such articles as the Board of Trade sanctions as substitutes for lime or lemon juice, and also of sugar and vinegar :
- (4.) The master of every such ship as last aforesaid shall serve out the lime or lemon juice or other such articles as aforesaid and sugar and vinegar to the crew, whenever they have consumed salt provisions for ten days, and so long afterwards as such consumption continues, the lime or lemon juice and sugar daily at the rate of half an ounce each per day and the vinegar weekly at the rate of half a pint per week, to each member of the crew :

And if in any such ship as aforesaid such medicines, medical stores, lime or lemon juice or other articles, sugar and vinegar, as are hereinbefore required, are not provided and kept on board as hereinbefore required, the master or owner shall incur a penalty not exceeding twenty pounds ; and if the master of any such ship as aforesaid neglects to serve out the lime or lemon juice or other articles, sugar or vinegar, in the case and manner hereinbefore directed, he shall for each such offence incur a penalty not exceeding five pounds ; and if any master is convicted in either of the last-mentioned penalties, and it appears that the offence is owing to the act or default of the owner, such master may recover the amount of such penalty and the costs incurred by him from the owner.

225. Every master shall keep on board proper weights and measures for the purpose of determining the quantities of the several provisions and articles served out, and shall allow the same to be used at the time of serving out such provisions and articles in the presence of a witness whenever any dispute arises about such quantities, and in default shall for every offence incur a penalty not exceeding ten pounds.

Masters to keep
weights and
measures on
board.

226. Any local marine board may, upon being required by the Board of Trade so to do, appoint and remove a medical inspector of ships for the port, and may fix his remuneration, such remuneration to be subject to the control of the Board of Trade ; and at ports where there are no local marine boards the Board of Trade may appoint and remove such inspectors, and fix their remuneration ; and it shall be the duty of such inspectors to inspect the medicines, medical stores, lime or lemon juice or other articles, sugar and vinegar, required to be kept on board any such ships as aforesaid ; and such inspection, if made at places where there are local marine boards, shall be made under their direction, and also in any special cases under the direction of the Board of Trade, and if made at places where there are no local marine boards, shall be made under the direction of the Board of Trade ; and such medical inspectors shall for the purposes of such inspection have the same powers as the inspectors appointed by the Board of Trade under the first part of this act ; but every such inspector, if required by timely notice in writing from the master, owner or consignee, shall make his inspection three days at least before the ship proceeds to sea, and if the result of the inspection is satisfactory shall not again make

Board of Trade
and Local Boards
may appoint in-
spectors of medi-
cines, who are to
see that ships are
properly pro-
vided.

inspection before the commencement of the voyage, unless he has reason to suspect that some of the articles inspected have been subsequently removed, injured or destroyed; and whenever any such medical inspector is of opinion that in any ship hereby required to carry such articles as aforesaid the same or any of them are deficient in quantity or quality, or are placed in improper vessels, he shall signify the same in writing to the chief officer of customs of the port where such ship is lying, and also to the master, owner or consignee thereof, and thereupon the master of such ship, before proceeding to sea, shall produce to such chief officer of customs a certificate under the hand of such medical inspector or of some other medical inspector, to the effect that such deficiency has been supplied or remedied, or that such improper vessels have been replaced by proper vessels, as the case may require; and such chief officer of customs shall not grant a clearance for such ship without the production of such certificate, and if such ship attempts to go to sea without a clearance, may detain her until such certificate is produced; and if such ship proceeds to sea without the production of such certificate, the owner, master or consignee thereof shall incur a penalty not exceeding twenty pounds.

Penalty for selling bad drugs for ships.

227. Any person who sells or supplies any medicines, medical stores, lime or lemon juice, of bad quality, for the use of any ship, shall for each such offence incur a penalty not exceeding twenty pounds.

Expense of medical attendance and subsistence in case of illness, and of burial in case of death, how to be defrayed.

228. The following rules shall be observed with respect to expenses attendant on illness and death; (that is to say.)

- (1.) If the master or any seaman or apprentice receives any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendance and medicines, and of his subsistence until he is cured, or dies, or is brought back to some port in the United Kingdom, if shipped in the United Kingdom, or if shipped in some British possession to some port in such possession, and of his conveyance to such port, and the expense (if any) of his burial, shall be defrayed by the owner of such ship without any deduction on that account from the wages of such master, seaman or apprentice:
- (2.) If the master or any seaman or apprentice is on account of any illness temporarily removed from his ship for the purpose of preventing infection, or otherwise for the convenience of the ship, and subsequently returns to his duty, the expense of such removal and of providing the necessary advice with attendance and medicines and of his subsistence whilst away from the ship, shall be defrayed in like manner:
- (3.) The expense of all medicines and surgical or medical advice and attendance given to any master, seaman or apprentice whilst on board his ship shall be defrayed in like manner:
- (4.) In all other cases any reasonable expenses duly incurred by the owner for any seaman in respect of illness, and also any reasonable expenses duly incurred by the owner in respect of the burial of any seaman or apprentice who dies whilst on service, shall, if duly proved, be deducted from the wages of such seaman or apprentice.

Expenses, if paid by consul, to be recoverable from owner.

229. If any such expenses in respect of the illness, injury or hurt of any seaman or apprentice, as are to be borne by the owner, are paid by any consular officer or other person on behalf of her Majesty, or if any other expenses in respect of the illness, injury or hurt of any seaman or apprentice whose wages are not accounted for to such officer under the provisions hereinbefore contained in that behalf are so paid, such expenses shall be repaid to such officer or other person by the master of the ship, and if not so repaid, the amount thereof, with costs, shall be a charge upon the ship, and be recoverable from the said master or from the owner of the ship for

the time being as a debt due to her Majesty, and shall be recoverable either by ordinary process of law or in the manner in which seamen are hereby enabled to recover wages; and in any proceeding for the recovery thereof the production of a certificate of the facts, signed by such officer or other person, together with such vouchers (if any) as the case requires, shall be sufficient proof that the said expenses were duly paid by such consular officer or other person as aforesaid.

230. Every foreign-going ship having one hundred persons or upwards on board shall carry on board as part of her complement some person duly authorized by law to practise as physician, surgeon or apothecary; and in default the owner shall for every voyage of any such ship made without such medical practitioner incur a penalty not exceeding one hundred pounds: Provided that nothing herein contained shall in anywise affect any provision contained in the "Passengers Act, 1852," concerning the carriage of medical practitioners by the class of ships therein named passenger ships, nor shall any such passenger ship, if not thereby required to carry a medical practitioner, be hereby required to do so.

Certain ships to carry medical practitioners.

231. The following rules shall be observed with respect to accommodation on board; (that is to say.)

Place appropriated to seamen to have a certain space for each man, and to be properly constructed and kept clear.

- (1.) Every place in any ship occupied by seamen or apprentices, and appropriated to their use, shall have for every such seaman or apprentice, if they sleep in hammocks, a space of not less than nine superficial feet, and if they do not sleep in hammocks, a space of not less than twelve superficial feet, measured on the deck or floor of such place:
- (2.) Every such place shall either be six feet in height from deck to deck, or shall have for every seaman and apprentice, if they sleep in hammocks, a space of not less than fifty-four cubic feet, and if they do not sleep in hammocks, a space of not less than seventy-two cubic feet:
- (3.) Every such place shall be kept free from stores or goods of any kind, not being the personal property of the crew in use during the voyage:
- (4.) Every such place shall be properly caulked, and in all other respects securely and properly constructed and well ventilated:

And if any such place in any ship is not in the whole sufficiently large to give such space for each seaman and apprentice as hereinbefore required, or is not properly caulked and in all other respects securely and properly constructed and well ventilated, the owner shall for every such failure to comply with the provisions of this section incur a penalty not exceeding twenty pounds; and if any such space as aforesaid is not kept free from goods and stores as aforesaid, the master shall for every such failure to comply with the provisions of this section incur a penalty not exceeding ten pounds.

Power of making Complaint.

Power of making Complaint.

232. If any seaman or apprentice whilst on board any ship states to the master that he desires to make complaint to a justice of the peace, or consular officer, or naval officer in command of any of her Majesty's ships, against the master or any of the crew, the said master shall, if the ship is then at a place where there is a justice or any such officer as aforesaid, so soon as the service of the ship will permit, and if the ship is not then at such a place, so soon after her first arrival at such a place as the service of the ship will permit, allow such seaman or apprentice to go ashore or send him ashore in proper custody so that he may be enabled to make such complaint, and shall, in default, incur a penalty not exceeding ten pounds.

Seamen to be allowed to go ashore to make complaint to a justice.

Protection of Seamen from Imposition.

Sale of and charge upon wages to be invalid.

233. No wages due or accruing to any seaman or apprentice shall be subject to attachment or arrestment from any Court; and every payment of wages to a seaman or apprentice shall be valid in law, notwithstanding any previous sale or assignment of such wages, or of any attachment, incumbrance or arrestment thereon; and no assignment or sale of such wages or of salvage made prior to the accruing thereof shall bind the party making the same; and no power of attorney or authority for the receipt of any such wages or salvage shall be irrevocable.

No debt exceeding 5s. recoverable till end of voyage.

234. No debt exceeding in amount five shillings, incurred by any seaman after he has engaged to serve, shall be recoverable until the service agreed for is concluded.

Penalty for overcharges by lodging-house keepers.

235. If any person demands or receives from any seaman or apprentice to the sea service payment in respect of his board or lodging in the house of such person for a longer period than such seaman or apprentice has actually resided or boarded therein, he shall incur a penalty not exceeding ten pounds.

Penalty for detaining seamen's effects.

236. If any person receives or takes into his possession or under his control any monies, documents or effects of any seaman or apprentice to the sea service, and does not return the same or pay the value thereof, when required by such seaman or apprentice, subject to such deduction as may be justly due to him from such seaman or apprentice in respect to board or lodging or otherwise, or absconds therewith, he shall incur a penalty not exceeding ten pounds, and any two justices may, besides inflicting such penalty, by summary order direct the amount or value of such monies, documents or effects, subject to such deduction as aforesaid, to be forthwith paid to such seaman or apprentice.

Persons not to go on board before the final arrival of ship without permission.

237. Every person who, not being in her Majesty's service, and not being duly authorized by law for the purpose, goes on board any ship about to arrive at the place of her destination, before her actual arrival in dock or at the place of her discharge, without the permission of the master, shall for every such offence incur a penalty not exceeding twenty pounds; and the master or person in charge of such ship may take any such person so going on board as aforesaid into custody, and deliver him up forthwith to any constable or peace officer to be by him taken before a justice or justices or the sheriff of the county in Scotland, and to be dealt with according to the provisions of this act.

Penalty for solicitations by lodging-house keepers.

238. If within twenty-four hours after the arrival of any ship at any port in the United Kingdom, any person then being on board such ship solicits any seaman to become a lodger at the house of any person letting lodgings for hire, or takes out of such ship any effects of any seaman, except under his personal direction and with the permission of the master, he shall for every such offence incur a penalty not exceeding five pounds.

Discipline.

Misconduct endangering ship or life or limb a misdemeanor.

Discipline.

239. Any master of or any seaman or apprentice belonging to any British ship who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction, or serious damage of such ship, or tending immediately to endanger the life or limb of any person belonging to or on board of such ship, or who by wilful breach of duty, or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from immediate loss, destruction or serious

damage, or for preserving any person belonging to or on board of such ship from immediate danger to life or limb, shall for every such offence be deemed guilty of a misdemeanor.

240. Any Court having Admiralty jurisdiction in any of her Majesty's dominions may, upon application by the owner of any ship being within the jurisdiction of such Court, or by the part owner or consignee, or by the agent of the owner, or by any certificated mate, or by one-third or more of the crew of such ship, and upon proof on oath to the satisfaction of such Court that the removal of the master of such ship is necessary, remove him accordingly; and may also, with the consent of the owner or his agent, or the consignee of the ship, or if there is no owner or agent of the owner or consignee of the ship within the jurisdiction of the Court, then without such consent, appoint a new master in his stead; and may also make such order, and may require such security in respect of costs in the matter, as it thinks fit.

Power of Admiralty Courts to remove master.

241. If the Board of Trade or any local marine board has reason to believe that any master or mate is from incompetency or misconduct unfit to discharge his duties, the Board of Trade may either institute an investigation or may direct the local marine board at or nearest to the place at which it may be convenient for the parties and witnesses to attend to institute the same, and thereupon such persons as the Board of Trade may appoint for the purpose, or, as the case may be, the local marine board, shall, with the assistance of a local stipendiary magistrate (if any), and if there is no such magistrate of a competent legal assistant to be appointed by the Board of Trade, conduct the investigation, and may summon the master or mate to appear, and shall give him full opportunity of making a defence either in person or otherwise, and shall for the purpose of such investigation have all the powers given by the first part of this act to inspectors appointed by the Board of Trade, and may make such order with respect to the costs of such investigation as they may deem just; and shall on the conclusion of the investigation make a report upon the case to the Board of Trade; and in cases where there is no local marine board before which the parties and witnesses can conveniently attend, or where such local marine board is unwilling to institute the investigation, the Board of Trade may direct the same to be instituted before two justices or a stipendiary magistrate; and thereupon such investigation shall be conducted, and the results thereof reported, in the same manner and with the same powers in and with which formal investigations into wrecks and casualties are directed to be conducted, and the results thereof reported, under the provisions contained in the eighth part of this act, save only that, if the Board of Trade so directs, the person bringing the charge of incompetency or misconduct to the notice of the Board of Trade shall be deemed to be the party having the conduct of the case.

Power to investigate cases of alleged incompetency and misconduct.

242. The Board of Trade may suspend or cancel the certificate (whether of competency or service) of any master or mate in the following cases; (that is to say,)

Board of Trade may cancel or suspend certificates in certain cases.

- (1.) If upon any investigation made in pursuance of the last preceding section, he is reported to be incompetent, or to have been guilty of any gross act of misconduct, drunkenness or tyranny;
- (2.) If upon any investigation conducted under the provisions contained in the eighth part of this act, or upon any investigation made by a naval Court constituted as hereinafter mentioned, it is reported that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default;
- (3.) If he is superseded by the order of any Admiralty Court or of any naval Court constituted as hereinafter mentioned;
- (4.) If he is shown to have been convicted of any offence:

- (5.) If upon any investigation made by any Court or tribunal authorized or hereafter to be authorized by the legislative authority in any British possession to make inquiry into charges of incompetency or misconduct on the part of masters or mates of ships, or as to shipwrecks or other casualties affecting ships, a report is made by such Court or tribunal to the effect that he has been guilty of any gross act of misconduct, drunkenness or tyranny, or that the loss or abandonment of or serious damage to any ship or loss of life has been caused by his wrongful act or default, and such report is confirmed by the governor or person administering the government of such possession :

And every master or mate whose certificate is cancelled or suspended shall deliver it to the Board of Trade or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds ; and the Board of Trade may at any subsequent time grant to any person whose certificate has been cancelled a new certificate of the same or of any lower grade.

Offences of seamen and apprentices, and their punishments.

Desertion ;

248. Whenever any seaman who has been lawfully engaged or any apprentice to the sea service commits any of the following offences he shall be liable to be punished summarily as follows ; (that is to say.)

- (1.) For desertion he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also to forfeit all or any part of the clothes and effects he leaves on board, and all or any part of the wages or emoluments which he has then earned, and also, if such desertion takes place abroad, at the discretion of the Court, to forfeit all or any part of the wages or emoluments he may earn in any other ship in which he may be employed until his next return to the United Kingdom, and to satisfy any excess of wages paid by the master or owner of the ship from which he deserts to any substitute engaged in his place at a higher rate of wages than the rate stipulated to be paid to him :
- (2.) For neglecting or refusing, without reasonable cause, to join his ship, or to proceed to sea in his ship, or for absence without leave at any time within twenty-four hours of the ship's sailing from any port either at the commencement or during the progress of any voyage, or for absence at any time without leave and without sufficient reason from his ship or from his duty not amounting to desertion or not treated as such by the master, he shall be liable to imprisonment for any period not exceeding ten weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding the amount of two days' pay, and in addition for every twenty-four hours of absence either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute :
- (3.) For quitting the ship without leave after her arrival at her port of delivery and before she is placed in security, he shall be liable to forfeit out of his wages a sum not exceeding one month's pay :
- (4.) For wilful disobedience to any lawful command he shall be liable to imprisonment for any period not exceeding four weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit out of his wages a sum not exceeding two days' pay :
- (5.) For continued wilful disobedience to lawful commands, or continued wilful neglect of duty, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour, and also, at the discretion of the Court, to forfeit for every twenty-four hours' continuance of such disobedience or neglect either a sum not exceeding six days' pay, or any expenses which have been properly incurred in hiring a substitute :
- (6.) For assaulting any master or mate he shall be liable to imprison-

Neglecting or refusing to join, or to proceed to sea, absence within twenty-four hours before sailing, and absence without leave ;

Quitting without leave before ship is secured ;

Act of disobedience ;

Continued disobedience ;

Assault on officers ;

ment for any period not exceeding twelve weeks, with or without hard labour :

- (7.) For combining with any other or others of the crew to disobey lawful commands, or to neglect duty, or to impede the navigation of the ship or the progress of the voyage, he shall be liable to imprisonment for any period not exceeding twelve weeks, with or without hard labour : Combining to disobey ;
- (8.) For wilfully damaging the ship, or embezzling or wilfully damaging any of her stores or cargo, he shall be liable to forfeit out of his wages a sum equal in amount to the loss thereby sustained, and also, at the discretion of the Court, to imprisonment for any period not exceeding twelve weeks, with or without hard labour : Wilful damage and embezzlement ;
- (9.) For any act of smuggling of which he is convicted, and whereby loss or damage is occasioned to the master or owner, he shall be liable to pay to such master or owner such a sum as is sufficient to reimburse the master or owner for such loss or damage ; and the whole or a proportionate part of his wages may be retained in satisfaction or on account of such liability, without prejudice to any further remedy. Act of smuggling causing loss to owner.

244. Upon the commission of any of the offences enumerated in the last preceding section an entry thereof shall be made in the official log book, and shall be signed by the master and also by the mate or one of the crew ; and the offender, if still in the ship, shall before the next subsequent arrival of the ship at any port, or if she is at the time in port, before her departure therefrom, either be furnished with a copy of such entry or have the same read over distinctly and audibly to him ; and may thereupon make such reply thereto as he thinks fit ; and a statement that a copy of the said entry has been so furnished, or that the same has been so read over as aforesaid, and the reply (if any) made by the offender, shall likewise be entered and signed in manner aforesaid ; and in any subsequent legal proceeding the entries hereinbefore required shall, if practicable, be produced or proved, and in default of such production or proof the Court hearing the case may, at its discretion, refuse to receive evidence of the offence. Entry of offences to be made in official log, and to be read over or a copy given to the offender, and his reply, if any, to be also entered.

245. Every seafaring person whom the master of any ship is, under the authority of this act or of any other act of Parliament, compelled to take on board and convey, and every person who goes to sea in any ship without the consent of the master or owner or other person entitled to give such consent, shall, so long as he remains in such ship, be subject to the same laws and regulations for preserving discipline, and to the same penalties and punishments for offences constituting or tending to a breach of discipline, to which he would be subject if he were a member of the crew and had signed the agreement. Seamen whom masters of ships are compelled to convey, and persons going in ships without leave, to be subject to penalties for breach of discipline.

246. Whenever, either at the commencement or during the progress of any voyage, any seaman or apprentice neglects or refuses to join or deserts from or refuses to proceed to sea in any ship in which he is duly engaged to serve, or is found otherwise absenting himself therefrom without leave, the master or any mate, or the owner, ship's husband or consignee, may, in any place in her Majesty's dominions, with or without the assistance of the local police officers or constables, who are hereby directed to give the same, if required, and also at any place out of her Majesty's dominions, if and so far as the laws in force at such place will permit, apprehend him without first procuring a warrant ; and may thereupon in any case, and shall in case he so requires and it is practicable, convey him before some Court capable of taking cognizance of the matter, to be dealt with according to law ; and may, for the purpose of conveying him before such Court, detain him in custody, for a period not exceeding twenty-four hours or such shorter time Master or owner may apprehend deserters, without warrant.

as may be necessary, or may, if he does not so require, or if there is no such Court at or near the place, at once convey him on board; and if any such apprehension appears to the Court before which the case is brought to have been made on improper or on insufficient grounds, the master, mate, owner, ship's husband or consignee who makes the same or causes the same to be made shall incur a penalty not exceeding twenty pounds; but such penalty, if inflicted, shall be a bar to any action for false imprisonment in respect of such apprehension.

Workmen may be sent on board in lieu of being imprisoned.

247. Whenever any seaman or apprentice is brought before any Court on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or having deserted or otherwise absented himself therefrom without leave, such Court may, if the master or the owner or his agent so requires, instead of committing the offender to prison, cause him to be conveyed on board for the purpose of proceeding on the voyage, or deliver him to the master or any mate of the ship, or the owner or his agent, to be by them so conveyed, and may in such case order any costs and expenses properly incurred by or on behalf of the master or owner by reason of the offence to be paid by the offender, and, if necessary, to be deducted from any wages which he has then earned, or which by virtue of his then existing engagement he may afterwards earn.

Seamen imprisoned for desertion or breach of discipline may be sent on board before termination of sentence.

248. If any seaman or apprentice is imprisoned on the ground of his having neglected or refused to join or to proceed to sea in any ship in which he is engaged to serve, or of having deserted or otherwise absented himself therefrom without leave, or of his having committed any other breach of discipline, and if during such imprisonment and before his engagement is at an end his services are required on board his ship, any justice may, at the request of the master or of the owner or his agent, cause such seaman or apprentice to be conveyed on board his said ship for the purpose of proceeding on the voyage, or to be delivered to the master or any mate of the ship or to the owner or his agent, to be by them so conveyed, notwithstanding that the termination of the period for which he was sentenced to imprisonment has not arrived.

Entries and certificates of desertions abroad to be copied, sent home, and admitted in evidence.

249. In all cases of desertion from any ship in any place abroad the master shall produce the entry of such desertion in the official log book to the person or persons hereby required to indorse on the agreement a certificate of such desertion; and such person or persons shall thereupon make and certify a copy of such entry, and also a copy of the said certificate of desertion; and if such person is a public functionary he shall, and in other cases the said master shall, forthwith transmit such copies to the registrar-general of seamen in England; and the said registrar shall, if required, cause the same to be produced in any legal proceeding; and such copies, if purporting to be so made and certified as aforesaid, and certified to have come from the custody of the said registrar, shall in any legal proceeding relating to such desertion be received as evidence of the entries therein appearing.

Facilities for proving desertion, so far as concerns forfeiture of wages.

250. Whenever a question arises whether the wages of any seaman or apprentice are forfeited for desertion, it shall be sufficient for the party insisting on the forfeiture to show that such seaman or apprentice was duly engaged in or that he belonged to the ship from which he is alleged to have deserted, and that he quitted such ship before the completion of the voyage or engagement, or if such voyage was to terminate in the United Kingdom and the ship has not returned, that he is absent from her, and that an entry of the desertion has been duly made in the official log book; and thereupon the desertion shall, so far as relates to any forfeiture of wages or emoluments under the provisions hereinbefore contained, be

deemed to be proved, unless the seaman or apprentice can produce a proper certificate of discharge, or can otherwise show to the satisfaction of the Court that he had sufficient reasons for leaving his ship.

251. Whenever in any proceeding relating to seamen's wages it is shown that any seaman or apprentice has in the course of the voyage been convicted of any offence by any competent tribunal and rightfully punished therefor by imprisonment or otherwise, the Court hearing the case may direct a part of the wages due to such seaman, not exceeding three pounds, to be applied in reimbursing any costs properly incurred by the master in procuring such conviction and punishment.

Costs of procuring imprisonment may to the extent of 3*l.* be deducted from wages.

252. Whenever any seaman contracts for wages by the voyage or by the run or by the share, and not by the month or other stated period of time, the amount of forfeiture to be incurred under this act shall be taken to be an amount bearing the same proportion to the whole wages or share as a calendar month or other the period hereinbefore mentioned in fixing the amount of such forfeiture (as the case may be) bears to the whole time spent in the voyage; and if the whole time spent in the voyage does not exceed the period for which the pay is to be forfeited, the forfeiture shall extend to the whole wages or share.

Amount of forfeiture how to be ascertained when seamen contract for the voyage.

253. All clothes, effects, wages and emoluments which under the provisions hereinbefore contained are forfeited for desertion shall be applied in the first instance in or towards the reimbursement of the expenses occasioned by such desertion to the master or owner of the ship from which the desertion has taken place; and may, if earned subsequently to the desertion, be recovered by such master, or by the owner or his agent, in the same manner as the deserter might have recovered the same if they had not been forfeited; and in any legal proceeding relating to such wages the Court may order the same to be paid accordingly; and subject to such reimbursement the same shall be paid into the receipt of her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom; and in all other cases of forfeiture of wages under the provisions hereinbefore contained the forfeiture shall, in the absence of any specific directions to the contrary, be for the benefit of the master or owner by whom the wages are payable.

Application of forfeitures.

254. Any question concerning the forfeiture of or deductions from the wages of any seaman or apprentice may be determined in any proceeding lawfully instituted with respect to such wages, notwithstanding that the offence in respect of which such question arises, though hereby made punishable by imprisonment as well as forfeiture, has not been made the subject of any criminal proceeding.

Questions of forfeitures may be decided in suits for wages.

255. If any seaman on or before being engaged wilfully and fraudulently makes a false statement of the name of his last ship or last alleged ship, or wilfully and fraudulently makes a false statement of his own name, he shall incur a penalty not exceeding five pounds; and such penalty may be deducted from any wages he may earn by virtue of such engagement as aforesaid, and shall, subject to reimbursement of the loss and expenses (if any) occasioned by any previous desertion, be paid and applied in the same manner as other penalties payable under this act.

Penalty for false statement as to last ship or name.

256. Whenever any seaman commits an act of misconduct for which his agreement imposes a fine, and which it is intended to punish by enforcing such fine, an entry thereof shall be made in the official log book, and a copy of such entry shall be furnished or the same shall be read over to the offender, and an entry of such reading over, and of the reply (if any) made by the offender, shall be made, in the manner and subject to the conditions

Fines to be deducted from wages, and paid to shipping master.

hereinbefore specified with respect to the offences against discipline specified in and punishable under this act; and such fine shall be deducted and paid over as follows; (that is to say,) if the offender is discharged in the United Kingdom, and the offence and such entries in respect thereof as aforesaid are proved, in the case of a foreign-going ship to the satisfaction of the shipping master before whom the offender is discharged, and in the case of a home trade ship to the satisfaction of the shipping master at or nearest to the place at which the crew is discharged, the master or owner shall deduct such fine from the wages of the offender, and pay the same over to such shipping master; and if before the final discharge of the crew in the United Kingdom any such offender as aforesaid enters into any of her Majesty's ships, or is discharged abroad, and the offence and such entries as aforesaid are proved to the satisfaction of the officer in command of the ship into which he so enters, or of the consular officer, officer of customs, or other person by whose sanction he is so discharged, the fine shall thereupon be deducted as aforesaid, and an entry of such deduction shall then be made in the official log book (if any) and signed by such officer or other person; and on the return of the ship to the United Kingdom the master or owner shall pay over such fine, in the case of foreign-going ships, to the shipping master before whom the crew is discharged, and in the case of home trade ships to the shipping master at or nearest to the place at which the crew is discharged; and if any master or owner neglects or refuses to pay over any such fine in manner aforesaid, he shall for each such offence incur a penalty not exceeding six times the amount of the fine retained by him: provided that no act of misconduct for which any such fine as aforesaid has been inflicted and paid shall be otherwise punished under the provisions of this act.

Penalty for enticing to desert, and harbouring deserters.

257. Every person who by any means whatever persuades or attempts to persuade any seaman or apprentice to neglect or refuse to join or to proceed to sea in or to desert from his ship, or otherwise to absent himself from his duty, shall for each such offence in respect of each such seaman or apprentice incur a penalty not exceeding ten pounds; and every person who wilfully harbours or secretes any seaman or apprentice who has deserted from his ship, or who has wilfully neglected or refused to join or has deserted from his ship, knowing or having reason to believe such seaman or apprentice to have so done, shall for every such seaman or apprentice so harboured or secreted incur a penalty not exceeding twenty pounds.

Penalty for obtaining passage surreptitiously.

258. Any person who secretes himself and goes to sea in any ship without the consent of either the owner, consignee or master, or of a mate, or of any person in charge of such ship, or of any other person entitled to give such consent, shall incur a penalty not exceeding twenty pounds, or be liable to imprisonment with or without hard labour for any period not exceeding four weeks.

On change of masters, documents hereby required to be handed over to successor.

259. If during the progress of a voyage the master is superseded or for any other reason quits the ship and is succeeded in the command by some other person, he shall deliver to his successor the various documents relating to the navigation of the ship and to the crew thereof which are in his custody, and shall in default incur a penalty not exceeding one hundred pounds; and such successor shall immediately on assuming the command of the ship enter in the official log a list of the documents so delivered to him.

Naval Courts.

Naval Courts on the High Seas and abroad.

Naval Courts may be summoned for hearing complaints, and in-

260. Any officer in command of any ship of her Majesty on any foreign station, or, in the absence of such officer, any consular officer, may summon

a Court, to be termed a "Naval Court," in the following cases ; (that is to say,)

investigating wrecks on the high seas or abroad.

- (1.) Whenever a complaint which appears to such officer to require immediate investigation is made to him by the master of any British ship, or by any certificated mate, or by one or more of the seamen belonging to any such ship :
- (2.) Whenever the interest of the owner of any British ship or of the cargo of any such ship appears to such officer to require it :
- (3.) Whenever any British ship is wrecked or abandoned or otherwise lost at or near the place where such officer may be, or whenever the crew or part of the crew of any British ship which has been wrecked, abandoned or lost abroad, arrives at such place.

261. Every such Naval Court as aforesaid shall consist of not more than five and not less than three members, of whom, if possible, one shall be an officer in the naval service of her Majesty not below the rank of lieutenant, one a consular officer, and one a master of a British merchant ship, and the rest shall be either officers in the naval service of her Majesty, masters of British merchant ships or British merchants ; and such Court may include the naval or consular officer summoning the same, but shall not include the master or consignee of the ship to which the parties complaining or complained against may belong ; and the naval or consular officer in such Court, if there is only one such officer in the Court, or, if there is more than one, the naval or consular officer who, according to any regulations for settling their respective ranks for the time being in force, is of the highest rank, shall be the president of such Court.

Constitution of such Courts.

262. Every such Naval Court shall hear and investigate the complaint brought before it, or the cause of the wreck or abandonment, (as the case may be,) and may for that purpose summon and compel the attendance of parties and witnesses, and administer oaths, and order the production of documents, and shall conduct the investigation in such manner as to give any person against whom any charge is made an opportunity of making a defence.

General functions and mode of action of such Courts.

263. Every such Naval Court may, after hearing the case, exercise the following powers ; (that is to say,)

Powers of such Courts :

- (1.) It may, if unanimous that the safety of the ship or crew, or the interest of the owner, absolutely requires it, supersede the master, and may appoint another person to act in his stead ; but no such appointment shall be made without the consent of the consignee of the ship, if then at the place :
- (2.) It may discharge any seaman from his ship :
- (3.) It may order the wages of any seaman so discharged or any part of such wages to be forfeited, and may direct the same either to be retained by way of compensation to the owner, or to be paid into the receipt of her Majesty's Exchequer in the same manner as other penalties and forfeitures under this act :
- (4.) It may decide any questions as to wages, or fines, or forfeitures, arising between any of the parties to the proceedings :
- (5.) It may direct that all or any of the costs incurred by the master or owner of any ship in procuring the imprisonment of any seaman or apprentice in a foreign port, or in his maintenance whilst so imprisoned, shall be paid out of and deducted from the wages of such seaman or apprentice, whether then or subsequently earned :
- (6.) It may exercise the same powers with regard to persons charged before it with the commission of offences at sea or abroad as are by this act given to British consular officers :
- (7.) It may order the costs of the proceeding before it (if any), or any portion thereof, to be paid by any of the parties thereto, and may

To supersede the master ;

To discharge a seaman ;
To forfeit wages ;

To decide disputes as to wages, &c. ;

To direct costs of imprisonment to be paid out of wages ;

To send home offenders for trial ;

To order payment of costs, &c.

order any person making a frivolous or vexatious complaint to pay compensation for any loss or delay caused thereby; and any cost or compensation so ordered shall be paid by such person accordingly, and may be recovered in the same manner in which the wages of seamen are recoverable, or may, if the case admits, be deducted from his wages:

And 'all orders duly made by any such Court under the powers hereby given to it shall in any subsequent legal proceedings be deemed conclusive as to the rights of the parties.

Orders to be entered in official log.

264. All orders made by any such Naval Court shall, whenever practicable, be entered in the official log book of the ship to which the parties to the proceedings before it belong, and shall be signed by the president of the Court.

Report to be made of proceedings of Naval Courts.

265. Every such Naval Court shall make a report to the Board of Trade, containing the following particulars; (that is to say,)

- (1.) A statement of the proceedings, with the order made by the Court, and a report of the evidence:
- (2.) An account of the wages of any seaman or apprentice who is discharged from his ship by such Court:
- (3.) If summoned in order to inquire into a case of wreck or abandonment, a statement of the opinion of the Court as to the cause of such wreck or abandonment, with such remarks on the conduct of the master and crew as the circumstances require:

And every such report shall be signed by the president of the Court; and every document purporting to be such a report and to be so signed as aforesaid shall, if produced out of the custody of some officer of the Board of Trade, be deemed to be such report, unless the contrary is proved, and shall be received in evidence, subject to all just exceptions.

Penalty for preventing complaint or obstructing investigation.

266. Any person who wilfully and without due cause prevents or obstructs the making of any such complaint as last aforesaid, or the conduct of any case or investigation by any Naval Court, shall for each such offence incur a penalty not exceeding fifty pounds, or be liable to imprisonment with or without hard labour for any period not exceeding twelve weeks.

Crimes committed abroad.

Crimes committed on the High Seas and abroad.

Offences committed by British seamen at foreign ports to be within Admiralty jurisdiction.

267. All offences against property or person committed in or at any place either ashore or afloat out of her Majesty's dominions by any master, seaman or apprentice who at the time when the offence is committed is or within three months previously has been employed in any British ship shall be deemed to be offences of the same nature respectively, and be liable to the same punishments respectively, and be inquired of, heard, tried, determined and adjudged in the same manner and by the same Courts and in the same places as if such offences had been committed within the jurisdiction of the Admiralty of England; and the costs and expenses of the prosecution of any such offence may be directed to be paid as in the case of costs and expenses of prosecutions for offences committed within the jurisdiction of the Admiralty of England.

Conveyance of offenders and witnesses to United Kingdom or some British possession.

268. The following rules shall be observed with respect to offences committed on the high seas or abroad; (that is to say,)

- (1.) Whenever any complaint is made to any British consular officer of any of the offences mentioned in the last preceding section, or of any offence on the high seas having been committed by any master, seaman or apprentice belonging to any British ship, such consular officer may inquire into the case upon oath, and may if the case so

requires take any steps in his power, for the purpose of placing the offender under necessary restraint and of sending him as soon as practicable in safe custody to the United Kingdom, or to any British possession in which there is a Court capable of taking cognizance of the offence, in any ship belonging to her Majesty or to any of her subjects, to be there proceeded against according to law :

- (2.) For the purpose aforesaid such consular officer may order the master of any ship belonging to any subject of her Majesty bound to the United Kingdom or to such British possession as aforesaid to receive and afford a passage and subsistence during the voyage to any such offender as aforesaid, and to the witnesses, so that such master be not required to receive more than one offender for every one hundred tons of his ship's registered tonnage, or more than one witness for every fifty tons of such tonnage ; and such consular officer shall indorse upon the agreement of the ship such particulars with respect to any offenders or witnesses sent in her as the Board of Trade requires :
- (3.) Every such master shall on his ship's arrival in the United Kingdom, or in such British possession as aforesaid, give every offender so committed to his charge into the custody of some police officer or constable, who shall take the offender before a justice of the peace or other magistrate by law empowered to deal with the matter, and such justice or magistrate shall deal with the matter as in cases of offences committed upon the high seas :

And any such master as aforesaid who, when required by any British consular officer to receive and afford a passage and subsistence to any offender or witness, does not receive him and afford such passage and subsistence to him, or who does not deliver any offender committed to his charge into the custody of some police officer or constable as hereinbefore directed, shall for each such offence incur a penalty not exceeding fifty pounds ; and the expense of imprisoning any such offender and of conveying him and the witnesses to the United Kingdom or to such British possession as aforesaid in any manner other than in the ship to which they respectively belong, shall be part of the costs of the prosecution, or be paid as costs incurred on account of seafaring subjects of her Majesty left in distress in foreign parts.

269. Whenever any case of death happens on board any foreign-going ship, the shipping master shall on the arrival of such ship at the port where the crew is discharged inquire into the cause of such death, and shall make on the list of the crew delivered to him as herein required an indorsement to the effect either that the statement of the cause of death therein contained is in his opinion true or otherwise, as the result of the inquiry requires ; and every such shipping master shall for the purpose of such inquiry have the powers hereby given to inspectors appointed by the Board of Trade under the first part of this act ; and if in the course of such inquiry it appears to him that any such death as aforesaid has been caused by violence or other improper means, he shall either report the matter to the Board of Trade, or, if the emergency of the case so requires, shall take immediate steps for bringing the offender or offenders to justice.

Inquiry into cause of death on board.

270. Whenever in the course of any legal proceedings instituted in any part of her Majesty's dominions before any judge or magistrate, or before any person authorized by law or by consent of parties to receive evidence, the testimony of any witness is required in relation to the subject matter of such proceeding, then upon due proof, if such proceeding is instituted in the United Kingdom, that such witness cannot be found in that kingdom, or if in any British possession, that he cannot be found in the same possession, any deposition that such witness may have previously made on oath in relation to the same subject matter before any justice or magistrate

Depositions to be received in evidence when witness cannot be produced.

in her Majesty's dominions, or any British consular officer elsewhere, shall be admissible in evidence subject to the following restrictions ; (that is to say,)

- (1.) If such deposition was made in the United Kingdom, it shall not be admissible in any proceeding instituted in the United Kingdom :
- (2.) If such a deposition was made in any British possession, it shall not be admissible in any proceeding instituted in the same British possession :
- (3.) If the proceeding is criminal it shall not be admissible unless it was made in the presence of the person accused :

Every deposition so made as aforesaid shall be authenticated by the signature of the judge, magistrate or consular officer, before whom the same is made ; and such judge, magistrate or consular officer shall, when the same is taken in a criminal matter, certify, if the fact is so, and that the accused was present at the taking thereof, but it shall not be necessary in any case to prove the signature or official character of the person appearing to have signed any such deposition ; and in any criminal proceeding such certificate as aforesaid shall, unless the contrary is proved, be sufficient evidence of the accused having been present in manner thereby certified ; but nothing herein contained shall affect any case in which depositions taken in any proceeding are rendered admissible in evidence by any act of parliament, or by any act or ordinance of the legislature of any colony, so far as regards such colony, or to interfere with the power of any colonial legislature to make such depositions admissible in evidence, or to interfere with the practice of any Court in which depositions not authenticated as herein-before mentioned are admissible.

*Registration and
Returns respecting
Seamen.*

Establishment
of register office.

Registration of and Returns respecting Seamen.

271. There shall be in the port of London an office, to be called the "General Register and Record Office of Seamen," and the Board of Trade shall have control over the same, and may appoint and from time to time remove a registrar general, and such assistants, clerks and servants as may be necessary, and may from time to time, with the consent of the Treasury, regulate their salaries and allowances ; and such salaries and allowances, and all other necessary expenses, shall be paid by the Treasury out of any monies to be granted by parliament for that purpose ; and the Board of Trade may direct the business of the register office at any of the outports to be transacted at the shipping office, or, with the consent of the Commissioners of Customs, at the custom house of the port, and may appoint the shipping master, or, with such consent as aforesaid, some officer of customs, to conduct the same ; and such business shall thereupon be conducted accordingly, but shall in all cases be subject to the immediate control of the Board of Trade.

Register of seamen
to be kept.

272. The said registrar general of seamen shall by means of the agreements, lists and other papers to be transmitted to him as herein directed, or by such other means as are in his power, keep a register of all persons who serve in ships subject to the provisions of this act.

Lists to be made
for all ships, con-
taining certain
particulars.

273. Every master of every foreign-going ship of which the crew is discharged in the United Kingdom, in whatever part of her Majesty's dominions the same is registered, and of every home trade ship, shall make out and sign a list in a form sanctioned by the Board of Trade, containing the following particulars ; (that is to say,)

- (1.) The number and date of the ship's register and her registered tonnage :
- (2.) The length and general nature of the voyage or employment :
- (3.) The christian names, surnames, ages and places of birth of all the crew, including the master and apprentices ; their qualities on board,

their last ships or other employments, and the dates and places of their joining the ship :

- (4.) The names of any members of the crew who have died or otherwise ceased to belong to the ship, with the times, places, causes and circumstances thereof :
- (5.) The names of any members of the crew who have been maimed or hurt, with the times, places, causes and circumstances thereof :
- (6.) The wages due to any of the crew who have died, at the times of their respective deaths :
- (7.) The clothes and other effects belonging to any of the crew who have died, with a statement of the manner in which they have been dealt with, and the money for which any of them have been sold :
- (8.) The name, age and sex of every person, not being one of the crew, who dies on board, with the date and the cause thereof :
- (9.) Every birth which happens on board, with the date thereof, the sex of the infant, and the names of the parents :
- (10.) Every marriage which takes place on board, with the date thereof, and the names and ages of the parties.

274. In the case of foreign-going ships, the master shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to the shipping master before whom the crew is discharged such list as hereinbefore required, and if he fails so to do shall for every default incur a penalty not exceeding five pounds ; and such shipping master shall thereupon give to the master a certificate of such delivery ; and no officer of customs shall clear inwards any foreign-going ship without the production of such certificate, and any such officer may detain any such ship until the same is produced.

Lists for foreign-going ships to be delivered to shipping master on arrival.

275. The master or owner of every home trade ship shall, within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year, transmit or deliver to some shipping master in the United Kingdom such list as hereinbefore required for the preceding half year, and shall in default incur a penalty not exceeding five pounds ; and such shipping master shall give to the master or owner a certificate of such transmission or delivery ; and no officer of customs shall grant a clearance or transire for any home trade ship without the production of such certificate, and any such officer may detain any such ship until the same is produced.

Lists to be delivered by home trade ships half-yearly.

276. If any ship ceases by reason of transfer of ownership or change of employment to fall within the definition of a foreign-going or of a home trade ship, the master or owner thereof shall, if such ship is then in the United Kingdom, within one month, and if she is elsewhere, within six months, deliver or transmit to the shipping master at the port to which the ship has belonged such list as hereinbefore mentioned, duly made out to the time at which she ceased to be a foreign-going or home trade ship, and in default shall for each offence incur a penalty not exceeding ten pounds ; and if any ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the shipping master at the port to which the ship belonged such list as hereinbefore mentioned duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding ten pounds.

Lists to be sent home in case of transfer of ship and in case of loss.

277. All shipping masters and officers of customs shall take charge of all documents which are delivered or transmitted to or retained by them in pursuance of this act, and shall keep them for such time (if any) as may be necessary for the purpose of settling any business arising at the place where

Shipping masters and other officers to transmit documents to registrar.

Registrar to permit inspection, to produce originals, and give copies.

such documents come into their hands, or for any other proper purpose, and shall, if required, produce them for any of such purposes, and shall then transmit them to the registrar general of seamen, to be by him recorded and preserved; and the said registrar shall, on payment of a moderate fee to be fixed by the Board of Trade, or without payment of any fee if the Board of Trade so directs, allow any person to inspect the same; and in cases in which the production of the original of any such document in any Court of justice or elsewhere is essential, shall produce the same, and in other cases shall make and deliver to any person requiring it a certified copy of any such document or of any part thereof; and every copy purporting to be so made and certified shall be received in evidence, and shall have all the effect of the original of which it purports to be a copy.

Officers of customs to make returns of ships to registrar.

278. The collector or comptroller of customs at every port in the United Kingdom shall on or before the first day of February and the first day of August in every year transmit to the registrar general of seamen a list of all ships registered in such port, and also of all ships whose registers have been transferred or cancelled in such port since the last preceding return.

Agreements, indentures and assignments, on arrival at a foreign port to be deposited with the consul, and at a colony with the officers of customs.

279. The following rules shall be observed with respect to the delivery of documents to British consular officers; (that is to say.)

- (1.) Whenever any ship, in whatever part of her Majesty's dominions the same is registered, (except ships whose business for the time being is to carry passengers,) arrives at any foreign port where there is a British consular officer, or at any port in any British possession abroad, and remains thereat for forty-eight hours, the master shall, within forty-eight hours of the ship's arrival, deliver to such consular officer, or to the chief officer of customs, (as the case may be,) the agreement with the crew, and also all indentures and assignments of apprenticeships, or, in the case of a ship belonging to a British possession, such of the said documents as such ship is provided with:
- (2.) Such officer shall keep such documents during the ship's stay in such port, and, in cases where any indorsements upon the agreement are hereby required, shall duly make the same, and shall return the said documents to the master a reasonable time before his departure, with a certificate indorsed on the agreement, stating when the same were respectively delivered and returned:
- (3.) If it appears that the required forms have been neglected, or that the existing laws have been transgressed, such officer shall make an indorsement to that effect on the agreement, and forthwith transmit a copy of such indorsement, with the fullest information he can collect regarding such neglect or transgression, to the registrar general of seamen:

And if any master fails to deliver any such document as aforesaid he shall for every such default incur a penalty not exceeding twenty pounds; and in any prosecution for such penalty it shall lie upon the master either to produce the certificate of the consular officer or officer of customs hereinbefore required, or to prove that he duly obtained the same, or that it was impracticable for him so to do.

Official Logs.

Official logs to be kept in forms sanctioned by Board of Trade.

Official Logs.

280. The Board of Trade shall sanction forms of official log books, which may be different for different classes of ships, so that each such form contains blanks for the entries hereinafter required, and an official log of every ship (except ships employed exclusively in trading between ports on the coasts of the United Kingdom) shall be kept in the appropriate sanctioned form; and such official log may, at the discretion of the master or

owner, either be kept distinct from the ordinary ship's log or united therewith, so that in all cases all the blanks in the official log be duly filled up.

281. Every entry in every official log shall be made as soon as possible after the occurrence to which it relates, and if not made on the same day as the occurrence to which it relates, shall be made and dated so as to show the date of the occurrence and of the entry respecting it; and in no case shall any entry therein in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge be made more than twenty-four hours after such arrival.

Entries to be made in due time.

282. Every master of a ship for which an official log book is hereby required shall make or cause to be made therein entries of the following matters: (that is to say.)

Entries required in official log.

- (1.) Every legal conviction of any member of his crew, and the punishment inflicted: Convictions.
- (2.) Every offence committed by any member of his crew for which it is intended to prosecute, or to enforce a forfeiture, or to exact a fine, together with such statement concerning the reading over such entry, and concerning the reply (if any) made to the charge, as hereinbefore required: Offences.
- (3.) Every offence for which punishment is inflicted on board, and the punishment inflicted: Punishments.
- (4.) A statement of the conduct, character and qualifications of each of his crew, or a statement that he declines to give an opinion on such particulars: Conduct, &c. of crew.
- (5.) Every case of illness or injury happening to any member of the crew, with the nature thereof, and the medical treatment adopted (if any): Illnesses and injuries.
- (6.) Every case of death happening on board, and of the cause thereof: Deaths.
- (7.) Every birth happening on board, with the sex of the infant and the names of the parents: Births.
- (8.) Every marriage taking place on board, with the names and ages of the parties: Marriages.
- (9.) The name of every seaman or apprentice who ceases to be a member of the crew, otherwise than by death, with the place, time, manner and cause thereof: Quitting ship.
- (10.) The amount of wages due to any seaman who enters her Majesty's service during the voyage: Wages of men entering navy.
- (11.) The wages due to any seaman or apprentice who dies during the voyage, and the gross amount of all deductions to be made therefrom: Wages of deceased seamen.
- (12.) The sale of the effects of any seaman or apprentice who dies during the voyage, including a statement of each article sold, and of the sum received for it: Sale of deceased men's effects.
- (13.) Every collision with any other ship, and the circumstances under which the same occurred. Collisions.

283. The entries hereby required to be made in official log books shall be signed as follows; (that is to say,) every such entry shall be signed by the master and by the mate or some other of the crew, and every entry of illness, injury, or death shall be also signed by the surgeon or medical practitioner on board (if any); and every entry of wages due to or of the sale of the effects of any seaman or apprentice who dies shall be signed by the master and by the mate and some other member of the crew; and every entry of wages due to any seaman who enters her Majesty's service shall be signed by the master, and by the seaman or by the officer authorized to receive the seaman into such service.

Entries how to be signed.

Penalties in respect of official logs.

284. The following offences in respect of official log books shall be punishable as hereinafter mentioned ; (that is to say,)

- (1.) If in any case an official log book is not kept in the manner hereby required, or if any entry hereby directed to be made in any such log book is not made at the time and in the manner hereby directed, the master shall for each such offence incur the specific penalty herein mentioned in respect thereof, or where there is no such specific penalty, a penalty not exceeding five pounds :
- (2.) Every person who makes or procures to be made or assists in making any entry in any official log book in respect of any occurrence happening previously to the arrival of the ship at her final port of discharge more than twenty-four hours after such arrival, shall for each such offence incur a penalty not exceeding thirty pounds :
- (3.) Every person who wilfully destroys or mutilates or renders illegible any entry in any official log book, or who wilfully makes or procures to be made or assists in making any false or fraudulent entry or omission in any such log book, shall for each such offence be deemed guilty of a misdemeanor.

Entries in official logs to be received in evidence.

285. All entries made in any official log book as hereinbefore directed shall be received in evidence in any proceeding in any Court of justice, subject to all just exceptions.

Official logs to be delivered to shipping master.

286. In the case of foreign-going ships the master shall, within forty-eight hours after the ship's arrival at her final port of destination in the United Kingdom, or upon the discharge of the crew, whichever first happens, deliver to the shipping master before whom the crew is discharged the official log book of the voyage ; and the master or owner of every home trade ship, not exclusively employed in trading between ports on the coasts in the United Kingdom, shall within twenty-one days after the thirtieth day of June and the thirty-first day of December in every year transmit or deliver to some shipping master in the United Kingdom the official log book for the preceding half-year ; and every master or owner who refuses or neglects to deliver his official log book as hereby required shall be subject to the same consequences and liabilities to which he is hereby made subject for the non-delivery of the list of his crew hereinbefore mentioned.

Official logs to be sent home in case of transfer of ship, and in case of loss.

287. If any ship ceases by reason of transfer of ownership or change of employment to fall within the definition of a foreign-going or of a home trade ship, the master or owner thereof shall if such ship is then in the United Kingdom, within one month, and if she is elsewhere, within six months, deliver or transmit to the shipping master at the port to which the ship belonged the official log book (if any) duly made out to the time at which she ceased to be a foreign-going or home trade ship, and in default shall for each offence incur a penalty not exceeding ten pounds ; and if any ship is lost or abandoned, the master or owner thereof shall, if practicable, and as soon as possible, deliver or transmit to the shipping master at the port to which the ship belonged the official log book (if any) duly made out to the time of such loss or abandonment, and in default shall for each offence incur a penalty not exceeding ten pounds.

East Indies and Colonies.

Provisions of act, as applied by East Indian and Colonial Governments to their own ships, may be enforced throughout the empire.

East Indies and Colonies.

288. If the governor general of India in council, or the respective legislative authorities in any British possession abroad, by any acts, ordinances or other appropriate legal means, apply or adapt any of the provisions in the third part of this act contained to any British ships registered at, trading with, or being at any place within their respective jurisdictions, and to the owners, masters, mates and crews thereof, such provisions, when

so applied and adapted as aforesaid, and as long as they remain in force, shall in respect of the ships and persons to which the same are applied be enforced, and penalties and punishments for the breach thereof shall be recovered and inflicted, throughout her Majesty's dominions, in the same manner as if such provisions had been hereby so adopted and applied, and such penalties and punishments had been hereby expressly imposed.

289. Every act, ordinance, or other form of law to be passed or promulgated by the governor general of India in council, or by any other legislative authority, in pursuance of this act, shall respectively be subject to the same right of disallowance or repeal, and require the same sanction or other acts and formalities, and be subject to the same conditions in all respects, as exist and are required in order to the validity of any other act, ordinance or other form of law passed by such governor general in council or other legislative authority respectively.

East Indian and Colonial acts to be subject to disallowance, and require sanction as in other cases.

290. If in any matter relating to any ship or to any person belonging to any ship there appears to be a conflict of laws, then, if there is in the third part of this act any provision on the subject which is hereby expressly made to extend to such ship, the case shall be governed by such provision, and if there is no such provision the case shall be governed by the law of the place in which such ship is registered.

Conflict of laws.

PART IV.

SAFETY AND PREVENTION OF ACCIDENTS.

Application.

291. The fourth part of this act shall apply to all British ships ; and all foreign steam ships carrying passengers between places in the United Kingdom shall be subject to all the provisions contained in the fourth part of this act, and likewise to the same provisions with respect to the certificates of the masters and mates thereof, to which British steam ships are subject.

Application.

Application of Part IV. of Act.

Boats for Sea-going Ships.

Boats for Sea-going Ships.

292. The following rules shall be observed with respect to boats and life buoys ; (that is to say,)

Rules as to boats and life buoys.

- (1.) No decked ship (except ships used solely as steam tugs and ships engaged in the whale fishery) shall proceed to sea from any place in the United Kingdom, unless she is provided, according to her tonnage, with boats duly supplied with all requisites for use, and not being fewer in number nor less in their cubic contents than the boats the number and cubic contents of which are specified in the table marked S. in the schedule hereto for the class to which such ship belongs :
- (2.) No ship carrying more than ten passengers shall proceed to sea from any place in the United Kingdom, unless, in addition to the boats hereinbefore required, she is also provided with a life boat furnished with all requisites for use, or unless one of her boats hereinbefore required is rendered buoyant after the manner of a life boat :
- (3.) No such ship as last aforesaid shall proceed to sea unless she is also provided with two life buoys :

And such boats and life buoys shall be kept so as to be at all times fit and ready for use : provided, that the enactments with respect to boats and life buoys herein contained shall not apply in any case in which a certificate has been duly obtained under the tenth section of the " Passengers Act, 1852."

15 & 16 Vict. c. 44, s. 10.

Penalties on masters and owners, &c. neglecting to provide boats and life buoys.

293. In any of the following cases, (that is to say,)

- (1.) If any ship hereinbefore required to be provided with boats or life buoys proceeds to sea without being so provided therewith, or if any of such boats or life buoys are lost or rendered unfit for service in the course of the voyage through the wilful fault or negligence of the owner or master ; or,
- (2.) If, in case of any of such boats or life buoys being accidentally lost or injured in the course of the voyage, the master wilfully neglects to replace or repair the same on the first opportunity ; or,
- (3.) If such boats and life buoys are not kept so as to be at all times fit and ready for use :

Then if the owner appears to be in fault he shall incur a penalty not exceeding one hundred pounds, and if the master appears to be in fault he shall incur a penalty not exceeding fifty pounds.

Officers of customs not to clear ships not complying with the above provisions.

294. No officer of customs shall grant a clearance or transire for any ship hereinbefore required to be provided with boats or with life buoys unless the same is duly so provided ; and if any such ship attempts to go to sea without such clearance or transire any such officer may detain her until she is so provided.

Rules as to Lights, Meeting and Passing.

Lights and Fog Signals, and Meeting and Passing.

Regulations as to lights and fog signals.

295. The following rules shall be observed with regard to lights and fog signals ; (that is to say,)

- (1.) The Admiralty shall from time to time make regulations requiring the exhibition of such lights, by such classes of ships, whether steam or sailing ships, within such places and under such circumstances as they think fit, and may from time to time revoke, alter or vary the same :
- (2.) The Admiralty may, if they think fit, make regulations requiring the use of such fog signals, by such classes of ships, whether steam or sailing ships, within such places and under such circumstances as they think fit, and may from time to time revoke, alter or vary the same :
- (3.) All regulations made in pursuance of this section shall be published in the London Gazette, and shall come into operation on a day to be named in the Gazette in which they are published, and the Admiralty shall cause all such regulations to be printed, and shall furnish a copy thereof to the owner or master of a ship who applies for the same, and production of the Gazette containing such regulations shall be sufficient evidence of the due making and purport thereof :
- (4.) All owners and masters shall be bound to take notice of the same, and shall, so long as the same continue in force, exhibit such lights, and use such fog signals, at such times, within such places, in such manner and under such circumstances as are enjoined by such regulations, and shall not exhibit any other lights or use any other fog signals ; and in case of default the master, or the owner of the ship, if it appears that he was in fault, shall for each occasion upon which such regulations are infringed incur a penalty not exceeding twenty pounds (a).

Rule as to ships meeting each other.

296. Whenever any ship, whether a steam or sailing ship, proceeding in one direction, meets another ship, whether a steam or sailing ship, proceeding in another direction, so that if both ships were to continue their respective courses they would pass so near as to involve any risk of a collision, the helms of both ships shall be put to port so as to pass on the port side of each other ; and this rule shall be obeyed by all steam ships and by all sailing ships whether on the port or starboard tack, and whether close-hauled or not,

(a) This section is repealed. See the M. S. Act Amendment Act, 1862, s. 2, and Sched., Table (A).

unless the circumstances of the case are such as to render a departure from the rule necessary in order to avoid immediate danger, and subject also to the proviso that due regard shall be had to the dangers of navigation, and, as regards sailing ships on the starboard tack close-hauled, to the keeping such ships under command (a).

297. Every steam ship, when navigating any narrow channel, shall, whenever it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such steam ship (a).

Rule for steamers in narrow channels.

298. If in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any rule for the exhibition of lights or the use of fog signals issued in pursuance of the powers hereinbefore contained, or of the foregoing rule as to the passing of steam and sailing ships, or of the foregoing rule as to a steam ship keeping to that side of a narrow channel which lies on the starboard side, the owner of the ship by which such rule has been infringed shall not be entitled to recover any recompence whatever for any damage sustained by such ship in such collision, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the rule necessary (a).

If collision ensues from breach of the above rules, owner not to be entitled to recover.

299. In case any damage to person or property arises from the non-observance by any ship of any of the said rules, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the rule necessary (a).

Breaches of such rules to imply wilful default.

Build and Equipment of Steam Ships.

Build and Equipment of Steam Ships.

300. The following rules shall be observed with respect to the build of iron steam ships; (that is to say,)

Iron steamers to be divided by water-tight partitions.

- (1.) Every steam ship built of iron, of one hundred tons or upwards, the building of which commenced after the twenty-eighth day of August, one thousand eight hundred and forty-six, and every steam ship built of iron of less burden than one hundred tons, the building of which commenced after the seventh day of August, one thousand eight hundred and fifty-one (except ships used solely as steam tugs), shall be divided by substantial transverse water-tight partitions, so that the fore part of the ship shall be separated from the engine room by one of such partitions, and so that the after part of such ship shall be separated from the engine room by another of such partitions:
- (2.) Every steam ship built of iron, the building of which commences after the passing of this act, shall be divided by such partitions as aforesaid into not less than three equal parts, or as nearly so as circumstances permit:
- (3.) In such last-mentioned ships each such partition as aforesaid shall be of equal strength with the side plates of the ship with which it is in contact:
- (4.) Every screw steam ship built of iron, the building of which commences after the passing of this act, shall, in addition to the above partitions, be fitted with a small water-tight compartment inclosing the after-extremity of the shaft:

And no officer of customs or other person shall grant a clearance or transire for any iron steam ship required to be divided or fitted as aforesaid, unless the same is so divided and fitted; and if any such ship attempts to ply or go to sea without such clearance or transire, any such officer may detain her until she is so divided and fitted; and if any steam ship hereinbefore required to be

Officers of customs not to grant certificates except so divided.

(a) This section is repealed. See the M. S. Act Amendment Act, 1862, s. 2, and Sched., Table (A).

so divided or fitted plies or goes to sea without being so divided or fitted, the owner shall incur a penalty not exceeding one hundred pounds (a).

Equipment of
steam ships.
Safety valve.

301. Steam ships shall be provided as follows ; (that is to say.)

(1.) Every steam ship of which a survey is hereby required shall be provided with a safety valve upon each boiler, so constructed as to be out of the control of the engineer when the steam is up, and, if such valve is in addition to the ordinary valve, it shall be so constructed as to have an area not less and a pressure not greater than the area of and pressure on that valve :

Compasses to be
adjusted.

(2.) Every sea-going steam ship employed to carry passengers shall have her compasses properly adjusted from time to time ; such adjustment, in the case of ships surveyed as hereinafter mentioned, to be made to the satisfaction of the shipwright surveyor, and according to such regulations as may be issued by the Board of Trade :

Fire hose.

(3.) Every sea-going steam ship (unless used solely as a steam tug) shall be provided with a hose adapted for the purpose of extinguishing fire in any part of the ship, and capable of being connected with the engines of the ship :

Signals.

(4.) Every sea-going steam ship employed to carry passengers shall be provided with the following means of making signals of distress ; (that is to say, twelve blue lights or twelve port fires, and one cannon with ammunition for at least twelve charges, or, in the discretion of the master or owner of such ship, with such other means of making signals (if any) as may have previously been approved by the Board of Trade :

Shelter for deck
passengers.

(5.) Every home trade steam ship employed to carry passengers by sea shall be provided with such shelter for the protection of deck passengers (if any) as the Board of Trade, having regard to the nature of the passage, the number of deck passengers to be carried, the season of the year, the safety of the ship and the circumstances of the case may require :

And if any steam ship as aforesaid plies or goes to sea from any port in the United Kingdom without being so provided as hereinbefore required, then for each default in any of the above requisites the owner shall (if he appears to be in fault) incur a penalty not exceeding one hundred pounds, and the master shall (if he appears to be in fault) incur a penalty not exceeding fifty pounds.

Penalty for im-
proper weight on
safety valve.

302. If any person places an undue weight on the safety valve of any steam ship, or, in the case of steam ships surveyed as hereinafter mentioned, increases such weight beyond the limits fixed by such engineer surveyor as hereinafter mentioned, he shall, in addition to any other liabilities he may incur by so doing, incur a penalty not exceeding one hundred pounds.

*Survey of Pas-
senger Steamers.*

Survey of Passenger Steamers.

Definition of pas-
senger steamer.

303. For the purpose of the enactments herein contained with respect to surveys and certificates of passenger steam ships, the word "passengers" shall be held to include any persons carried in a steam ship, other than the master and crew and the owner, his family and servants ; and the expression "passenger steamer" shall be held to include every British steam ship carrying passengers to, from or between any place or places in the United Kingdom, excepting steam ferry boats working in chains, commonly called steam bridges.

(a) This section is repealed. See the M. S. Act Amendment Act, 1862, s. 2, and Sched., Table (A).

304. Every passenger steamer shall be surveyed twice at the least in each year in manner hereinafter mentioned.

Passenger steamers to be surveyed.

305. The Board of Trade may from time to time appoint such number of fit and proper persons to be shipwright surveyors and engineer surveyors for the purposes of this act at such ports or places as it thinks proper, and may also appoint a surveyor general for the United Kingdom, and may from time to time remove such surveyors or any of them, and may from time to time fix and alter the rates of remuneration to be received by such surveyors.

Board of Trade to appoint surveyors, and fix their remuneration.

306. It shall be lawful for the said surveyors in the execution of their duties to go on board any steam ship at all reasonable times, and to inspect the same or any part thereof, or any of the machinery, boats, equipments or articles on board thereof, or any certificates of the master or mate to which the provisions of this act or any of the regulations to be made by virtue thereof apply, not unnecessarily detaining or delaying the ship from proceeding on any voyage, and, if in consequence of any accident to any such ship or for any other reason they consider it necessary so to do, to require the ship to be taken into dock for the purpose of surveying the hull thereof; and any person who hinders any such surveyor from going on board any such steam ship, or otherwise impedes him in the execution of his duty under this act, shall incur a penalty not exceeding five pounds.

Surveyors to have power to inspect.

307. The said surveyors shall execute their duties under the direction of the Board of Trade, and such Board shall make regulations as to the manner in which the surveys hereinafter mentioned shall be made, and as to the notice to be given to the surveyors when surveys are required, and as to the amount and payment of any travelling or other expenses incurred by such surveyors in the execution of their duties, and may thereby determine the persons by whom and the conditions under which such payment shall be made.

Board of Trade to regulate mode of making surveys.

308. Every surveyor who demands or receives directly or indirectly from the owner or master of any ship surveyed by him under the provisions of this act any fee or remuneration whatsoever for or in respect of such survey, otherwise than as the officer and by the direction of the Board of Trade, shall incur a penalty not exceeding fifty pounds.

Penalty on surveyors receiving fees unlawfully.

309. The owner of every passenger steamer shall cause the same to be surveyed at the times hereinafter directed by one of the said shipwright surveyors and by one of the said engineer surveyors so appointed as aforesaid; such shipwright surveyor being, in the case of iron steamers, a person who is in the judgment of the Board of Trade properly qualified to survey such ships; and such surveyors shall thereupon, if satisfied that they can with propriety do so, give to such owner declarations as follows:

Owners to have surveys made by shipwright and engineer surveyors, and surveyors to give declarations.

The declaration of the shipwright surveyor shall contain statements of the following particulars; (that is to say,)

- (1.) That the hull of the ship is sufficient for the service intended and in good condition;
- (2.) That the partitions, boats, life buoys, lights, signals, compasses and shelter for deck passengers, and the certificates of the master and mate or mates, are such and in such condition as required by this act;
- (3.) The time (if less than six months) for which the said hull and equipments will be sufficient;
- (4.) The limits (if any) beyond which, as regards the hull and equipments, the ship is in the surveyor's judgment not fit to ply;
- (5.) The number of passengers which the ship is in the judgment of the surveyor fit to carry, distinguishing, if necessary, between the respec-

tive numbers to be carried on the deck and in the cabins, and in different parts of the deck and cabins ; such numbers to be subject to such conditions and variations, according to the time of year, the nature of the voyage, the cargo carried, or other circumstances, as the case requires :

And the declaration of the engineer surveyor shall contain statements of the following particulars ; (that is to say,)

- (1.) That the machinery of the ship is sufficient for the service intended, and in good condition :
- (2.) The time (if less than six months) for which such machinery will be sufficient :
- (3.) That the safety valves and fire hose are such and in such condition as are required by this act :
- (4.) The limits of the weight to be placed on the safety valves :
- (5.) The limits (if any) beyond which, as regards the machinery, the ship is in the surveyor's judgment not fit to ply :

And such declarations shall be in such form as the Board of Trade directs.

Transmission of
declarations to
Board of Trade.
Penalty for delay.

310. The said owner shall transmit such declarations to the Board of Trade within fourteen days after the dates of the receipt thereof respectively ; and in default shall forfeit a sum not exceeding ten shillings for every day that the sending of such declarations is delayed ; and such sum shall be paid upon the delivery of the certificate hereinafter mentioned in addition to the fee payable for the same, and shall be applied in the same manner as such fees.

Times appointed
for surveys, and
transmission of
declarations.

311. In all cases where it is possible the said half-yearly surveys shall be made in the months of April and of October, and the declarations shall be transmitted on or before the thirtieth day of April and the thirty-first day of October respectively ; but if the owner of any passenger steamer is unable to have the same surveyed in the month of April or October, (as the case may be,) either by reason of such ship being absent from the United Kingdom during the whole of those periods respectively, or by reason of such ship or the machinery thereof being under construction or repair, or of such ship being laid up in dock, or for any other reason satisfactory to the Board of Trade, then he shall have the same surveyed as aforesaid as soon thereafter as possible, and shall transmit such declarations to the Board of Trade within fourteen days after the receipt thereof, together with a statement of the reasons which have prevented the survey of such ship at the time hereinbefore prescribed, and shall, in case of delay in transmitting the declarations, be liable to a forfeiture similar to that mentioned in the last preceding section.

Board of Trade
to issue certificate.

312. Upon the receipt of such declarations the Board of Trade shall, if satisfied that the provisions of the fourth part of this act have been complied with, cause a certificate in duplicate to be prepared and issued to the effect that the provisions of the law with respect to the survey of the ship and the transmission of declarations in respect thereof have been complied with ; and such certificate shall state the limits (if any) beyond which, according to the declaration of the surveyors, such ship is not fit to ply, and shall also contain a statement of the number of passengers which, according to the declaration of the shipwright surveyor, such ship is fit to carry, distinguishing (if necessary) between the respective numbers to be carried on the deck and in the cabins and in different parts of the deck and cabins, such number to be subject to such conditions and variations according to the time of year, the nature of the voyage, the cargo carried, and other circumstances, as the case requires.

Issue and trans-
mission of cer-
tificates.

313. The Board of Trade shall transmit such duplicate certificate to the shipping master or to some other public officer at such port as the owner

may mention for the purpose or at the port where the owner or his agent resides or where the ship was surveyed and is for the time being lying, and shall cause notice of such transmission to be given by post or otherwise to the master or owner or his agent; and the said shipping master or officer shall deliver such duplicate certificate to the said owner, master or agent on his applying and paying the fees and other sums (if any) herein mentioned as payable in that behalf; and in proving the due issue and transmission to the owner, agent or master of such certificate, it shall be sufficient to show that the same has been duly received by such shipping master or public officer as aforesaid, and that due notice of the transmission thereof to such shipping master or officer has been given to such owner, master or agent.

314. The owner of every passenger steamer requiring a certificate under the fourth part of this act shall pay for every certificate granted by the Board of Trade such fees as such Board directs, not exceeding the fees mentioned in the Table marked T. in the schedule hereto.

Fees to be paid for certificates.

315. No certificate shall be held to be in force for the purposes of the fourth part of this act beyond the date fixed by the Board of Trade for the expiration thereof; and no certificate shall be in force after notice is given by the Board of Trade to the owner, agent or master of the ship to which the same relates, that such Board has cancelled or revoked the same: Provided, that if any passenger steamer is absent from the United Kingdom at the time when her certificate expires, no penalty shall be incurred for the want of a certificate until she first begins to ply with passengers after her next subsequent return to the United Kingdom; and the Board of Trade may require any certificate which has expired, or has been revoked or cancelled, to be delivered up as it directs; and any owner or master who, without reasonable cause, neglects or refuses to comply with such requirement, shall incur a penalty not exceeding ten pounds.

How long certificates to continue in force.

316. The Board of Trade may revoke and cancel such certificates in any case in which it has reason to believe,—

Board of Trade may cancel certificates, and require fresh declarations.

- (1.) That the declarations of the sufficiency and good condition of the hull, equipments and machinery of any passenger steamer, or either of them, have been fraudulently or erroneously made; or,
- (2.) That such certificate has otherwise been issued upon false or erroneous information; or,
- (3.) That since the making of such declarations the hull, equipments or machinery of such ship have sustained any injury, or are otherwise insufficient:

And in every such case the Board of Trade may, if it thinks fit, require the owner to have the hull, equipments or machinery of such ship again surveyed, and to transmit a further declaration or declarations of the sufficiency and good condition thereof, before re-issuing any certificate or granting a fresh one in lieu thereof.

317. The owner or master of every passenger steamer shall forthwith on the transmission of any certificate as aforesaid to him or his agent cause one of the duplicates thereof so transmitted to be put up in some conspicuous part of the ship, so as to be visible to all persons on board the same, and shall cause it to be continued so put up so long as such certificate remains in force and such ship is in use; and in default such owner or master shall for every offence incur a penalty not exceeding ten pounds.

Copy of certificate to be placed in conspicuous part of ship.

318. It shall not be lawful for any passenger steamer to proceed to sea or upon any voyage or excursion with any passengers on board, unless the owner thereof has transmitted to the Board of Trade the declarations hereinbefore required, nor unless the owner or master thereof has received from

Ship not to proceed on her voyage without certificate.

such Board such a certificate as hereinbefore provided for, such certificate being a certificate applicable to the voyage or excursion on which such ship is about to proceed; and no officer of customs shall grant any clearance or transire for any passenger steamer unless upon the production of such certificate as aforesaid (being a certificate then in force and applicable as aforesaid); and if any passenger steamer attempts to ply or go to sea without such production, any such officer may detain her until such certificate is produced; and if any passenger steamer plies or goes to sea with any passengers on board, without having one of the duplicates of such certificate as aforesaid (being a certificate then in force, and applicable as aforesaid) so put up as aforesaid in some conspicuous part of the ship, the owner thereof shall for such offence incur a penalty not exceeding one hundred pounds, and the master of such ship shall also incur a further penalty not exceeding twenty pounds.

Penalty for carrying passengers in excess of numbers specified in certificate.

319. If the owner or master or other person in charge of any passenger steamer receives on board thereof or on or in any part thereof, or if such ship has on board thereof or on or in any part thereof, any number of passengers which, having regard to the time, occasion and circumstances of the case, is greater than the number of passengers allowed by the certificate, the owner or master shall incur a penalty not exceeding twenty pounds, and also an additional penalty not exceeding five shillings for every passenger over and above the number allowed by the certificate, or, if the fare of any of the passengers on board exceeds five shillings, not exceeding double the amount of the fares of all the passengers who are over and above the number so allowed as aforesaid, such fares to be estimated at the highest rate of fare payable by any passenger on board.

Forgery of declaration or certificate a misdemeanor.

320. Every person who knowingly and wilfully makes or assists in making or procures to be made a false or fraudulent declaration or certificate with respect to any passenger steamer requiring a certificate under the fourth part of this act, or who forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any declaration or certificate required by the fourth part of this act, or any words or figures in any such declaration or certificate, or any signature thereto, shall be deemed guilty of a misdemeanor.

Surveyors to make returns of the build and other particulars of steam ships, and owners and masters to give information for that purpose.

321. The said surveyors shall from time to time make such returns to the Board of Trade as it requires with respect to the build, dimensions, draught, burden, rate of sailing, room for fuel, and the nature and particulars of machinery and equipments of the ships surveyed by them; and every owner, master and engineer of any such ship shall, on demand, give to such surveyors all such information and assistance within his power as they require for the purpose of such returns; and every such owner, master or engineer who, on being applied to for that purpose, wilfully refuses or neglects to give such information or assistance, shall be liable to a penalty not exceeding five pounds.

Misconduct by Passengers in Steamers.

Penalties on persons forcing way on board; or

refusing to quit the ship.

Misconduct by Passengers in Steamers.

322. *The following offenders, (that is to say,)*

- (1.) *Any person who, after having been refused admission into any steamer by the owner or person in charge thereof or by any person in the employ of the owner thereof, on account of such steamer being full, and after having had the full amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter the same; and*
- (2.) *Any person, having got on board any steamer, who, upon being requested on the like account by the owner or person in charge thereof or*

by any person in the employ of the owner to leave such steamer before the same has quitted the place at which such person got on board, and upon having the full amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request :

Shall for each such offence incur a penalty not exceeding forty shillings, to be paid to the said owner (a).

323. *The following offenders, (that is to say,)*

- (1.) *Any person who travels or attempts to travel in any passenger steamer which has been duly surveyed in conformity with the provisions of this act, without having previously paid his fare, and with intent to avoid payment thereof ; and*
- (2.) *Any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond such distance, without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof ; and*
- (3.) *Any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit any such steamer :*

Shall for every such offence incur a penalty not exceeding five shillings, in addition to the fare payable by him, such penalty to be payable to the owner of such steamer (a).

Penalty for avoiding payment of fares.

324. Every person who, having committed any of the offences mentioned in the two last preceding sections or either of them, refuses on application of the master of the ship or of any other person in the employ of the owner thereof to give his name and address, or who, on such application, gives a false name or address, shall incur a penalty not exceeding twenty pounds, to be paid to the said owner.

Penalty on persons refusing to give their name and address.

325. The master of any home trade passenger steam ship may refuse to receive on board thereof any person who by reason of drunkenness or otherwise is in such a state, or misconducts himself in such a manner, as to cause annoyance to other passengers on board, or if such person is on board, may put him on shore at any convenient place ; and no person so refused admittance or put on shore shall be entitled to the return of any fare he may have paid.

Power to refuse or remove passengers who are drunk or misconduct themselves.

Accidents.

326. Whenever any steam ship has sustained or caused any accident occasioning loss of life or any serious injury to any person, or has received any material damage affecting her seaworthiness or her efficiency either in her hull or in any part of her machinery, the owner or master shall, within twenty-four hours after the happening of such accident or damage, or as soon thereafter as possible, send to the Board of Trade, by letter signed by such owner or master, a report of such accident or damage, and of the probable occasion thereof, stating the name of the ship, the port to which she belongs, and the place where she is ; and if such owner or master neglect so to do he shall for such offence incur a penalty not exceeding fifty pounds.

Accidents.

Accidents to steam ships to be reported to Board of Trade.

327. If the owner of any steam ship have reason, owing to the nonappearance of such ship, or to any other circumstance, to apprehend that such ship has been wholly lost, he shall as soon as conveniently may be send notice thereof in like manner to the Board of Trade, and if he neglect so to do within a reasonable time he shall for such offence incur a penalty not exceeding fifty pounds.

Notice to be given of apprehended loss of steam ships.

(a) This section is repealed. See the M. S. Act Amendment Act, 1862, s. 2, and Sched., Table (A).

Collisions to be entered in official log.

328. In every case of collision, in which it is practicable so to do, the master shall immediately after the occurrence cause a statement thereof, and of the circumstances under which the same occurred, to be entered in the official log book (if any), such entry to be signed by the master, and also by the mate or one of the crew, and in default shall incur a penalty not exceeding twenty pounds.

Carrying Dangerous Goods.

Provisions to prevent the taking dangerous goods on board without due notice.

Carrying Dangerous Goods.

329. No person shall be entitled to carry in any ship, or to require the master or owner of any ship to carry therein, any aquafortis, oil of vitriol, gunpowder or any other goods which, in the judgment of such master or owner, are of a dangerous nature; and if any person carries or sends by any ship any goods of a dangerous nature without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the master or owner at or before the time of carrying or sending the same to be shipped, he shall for every such offence incur a penalty not exceeding one hundred pounds; and the master or owner of any ship may refuse to take on board any parcel that he suspects to contain goods of a dangerous nature, and may require them to be opened to ascertain the fact.

PART V.

PILOTAGE.

Application.

Application of Part V. of Act.

Powers of Pilotage Authorities (General).

General jurisdiction of pilotage authorities.

330. The fifth part of this act shall apply to the United Kingdom only.

Powers of Pilotage Authorities (General).

331. Every pilotage authority shall retain all powers and jurisdiction which it now lawfully possesses, so far as the same are consistent with the provisions of this act; but no law relating to such authority, or to the pilots licensed by it, and no act done by such authority, shall, if inconsistent with any provision of this act, be of any force whatever.

Power of pilotage authorities to make and extend exemptions from compulsory pilotage.

332. Every pilotage authority shall have power by byelaw made with the consent of her Majesty in council, to exempt the masters of any ships, or of any classes of ships, from being compelled to employ qualified pilots, and to annex any terms or conditions to such exemptions, and to revise and extend any exemptions now existing by virtue of this act or any other act of parliament, law or charter, or by usage, upon such terms and conditions and in such manner as may appear desirable to such authority.

Powers of pilotage authorities.

333. Subject to the provisions contained in the fifth part of this act, it shall be lawful for every pilotage authority, by byelaw made with the consent of her Majesty in council, from time to time to do all or any of the following things within its districts; (that is to say.)

To determine qualifications of pilots;

(1.) To determine the qualifications to be required from persons applying to be licensed as pilots, whether in respect of their age, skill, time of service, character or otherwise:

To make regulations as to pilot boats;

(2.) To make regulations as to the approval and licensing of pilot boats and ships, with power to establish and regulate companies for the support of such boats and ships, and for a participation in the profits made thereby; the companies so established to be exempt from the provisions of the act passed in the session holden in the seventh and eighth years of the reign of her present Majesty, chapter one hundred and ten, intituled "An Act for the Registration, Incorporation and Regulation of Joint Stock Companies:"

To make regulations for the government of pilots;

(3.) To make regulations for the government of the pilots licensed by them, and for insuring their good conduct, and their constant attend-

ance to and effectual performance of their duty, either at sea or on shore :

- (4.) To fix the terms and conditions of granting licences to pilots and apprentices, and of granting such pilotage certificates as hereinafter mentioned to masters and mates, and to make regulations for punishing any breach of such regulations as aforesaid committed by such pilots or apprentices or by such masters and mates by the withdrawal or suspension of their licences or certificates, as the case may be, or by the infliction of penalties to be recoverable summarily before two justices, so that no such penalty be made to exceed the sum of twenty pounds, and so that every such penalty be capable of reduction at the discretion of the justices by whom the same is inflicted :

To make regulations as to licence and certificates ;

- (5.) To fix the rates and prices or other remuneration to be demanded and received for the time being by pilots licensed by such authority, or to alter the mode of remunerating such pilots, in such manner as such authority may, with such consent as aforesaid, think fit, so that no higher rates or prices be demanded or received from the masters or owners of ships in the case of the Trinity House than the rates and prices specified in the table marked U. in the schedule hereto ; and in the case of all other pilotage authorities, than the rates and prices which might have been lawfully fixed or demanded by such pilotage authorities respectively under any act of Parliament, charter or custom in force immediately before the commencement of this act :

To alter and reduce rates of pilotage ;

- (6.) To make such arrangements with any other pilotage authority for altering the limits of their respective districts, and for extending the powers of such other authority or the privileges of the pilots licensed by such other authority or any of them to all or any part of its own district, or for limiting its own powers or the privileges of its own pilots or any of them, or for sharing the said last-mentioned powers and privileges with the said other authority and the pilots licensed by it, or for delegating or surrendering such powers and privileges or any of them to any other pilotage authority either already constituted or to be constituted by agreement between such authorities, and to the pilots licensed by it, as may appear to such pilotage authorities to be desirable for the purpose of facilitating navigation or of reducing charges on shipping :

To arrange the limits of pilotage districts ;

- (7.) To establish, either alone or in conjunction with any other pilotage authority or authorities, funds for the relief of superannuated or infirm qualified pilots, or of their wives, widows or children, or to make any new regulations with respect to any funds already applicable to the above purposes or any of them, with power to determine the amount, manner, time and persons (such persons to be in the service of such pilotage authority) to and in which and by and upon whom the contributions in support of such existing or future funds may be made or levied ; and further, to declare the persons or class of persons, (such persons or class of persons being confined to men in the service of such pilotage authority, their wives, widows or children,) entitled to participate in the benefits of such existing or future funds, and the terms and conditions upon which they are to be so entitled :

To establish funds for superannuated pilots ;

- (8.) To repeal or alter any byelaw made in exercise of the above powers, and to make a new byelaw or new byelaws in lieu thereof :

To alter byelaws.

And every byelaw duly made by any pilotage authority in exercise of the powers hereby given to it shall be valid and effectual, notwithstanding any act of Parliament, rule, law or custom to the contrary.

334. Every byelaw proposed to be enacted by any pilotage authority in pursuance of the foregoing powers shall, before it is submitted to her

Publication of byelaws.

Majesty in council for her assent, be published in such manner as may from time to time be prescribed by the Board of Trade.

Byelaws to be laid before Parliament.

335. Every order in council made in pursuance of the provisions hereinbefore contained shall be laid before both Houses of Parliament as soon as possible after the making thereof.

Power of appeal to Board of Trade.

336. If the greater part in number of the qualified pilots belonging to any port, or the local marine board, where there is one, or at any port where there is no local marine board, if any masters, owners or insurers of ships, being not less than six in number, consider themselves aggrieved by any regulation or byelaw in force when this act comes into operation or hereafter made under some authority other than the provisions of this act, or by any defect or omission therein, they may appeal to the Board of Trade, and the said board may thereupon revoke or alter any such regulation or byelaw or may make additions thereto in such manner as, having regard to the interests of the persons concerned, may appear to be just and expedient; and every order so made shall be conclusive in the matter.

Returns by Pilotage Authorities (General).

Pilotage authorities to make full returns to the Board of Trade of certain particulars connected with pilotage.

Returns by Pilotage Authorities (General).

337. Every pilotage authority shall deliver periodically to the Board of Trade, in such form and at such times as such board requires, returns of the following particulars with regard to pilotage within the port or district under the jurisdiction of such authority; (that is to say.)

- (1.) All byelaws, regulations, orders, or ordinances relating to pilots or pilotage for the time being in force :
- (2.) The names and ages of all pilots or apprentices licensed or authorized to act by such authority, and of all pilots or apprentices acting either mediately or immediately under such authority, whether so licensed or authorized or not :
- (3.) The service for which each pilot or apprentice is licensed :
- (4.) The rates of pilotage for the time being in force, including therein the rates and descriptions of all charges upon shipping made for or in respect of pilots or pilotage :
- (5.) The total amount received for pilotage, distinguishing the several amounts received from British ships and from foreign ships respectively, and the several amounts received in respect of different classes of ships paying different rates of pilotage, according to the scale of such rates for the time being in force, and the several amounts received for the several classes of service rendered by pilots; and also the amount paid by such ships (if any) as have before reaching the outer limits of pilotage water if outward bound, or their port of destination if inward bound, to take or pay for two or more pilots, whether licensed by the same or by different pilotage authorities; together with the numbers of the ships of each of the several classes paying such several amounts as aforesaid :
- (6.) The receipt and expenditure of all monies received by or on behalf of such authority, or by or on behalf of any sub-commissioners appointed by them, in respect of pilots or pilotage :

And shall allow the Board of Trade, or any persons appointed by such board for the purpose, to inspect any books or documents in its possession relating to the several matters hereinbefore required to be returned to the Board of Trade.

If local authorities fail to give the required returns, their jurisdiction may be transferred to the Trinity House.

338. If any of such pilotage authorities as aforesaid (other than the Trinity House, or sub-commissioners of pilotage appointed by it, as herein-after mentioned), fail to deliver to the Board of Trade the periodical returns hereinbefore required within one year of such time as may be fixed by such board for the purpose, or if any of such authorities do not allow the

said board, or any persons who may be appointed by it for the purpose, to inspect any books or documents in their possession relating to the matters hereinbefore required to be returned by them, it shall be lawful for her Majesty, by and with the advice of her Privy Council, to direct that all the rights and powers of such authorities in respect of pilotage shall cease or be suspended during such time as her Majesty directs; and thereupon the Trinity House shall thereafter, or during such time as such suspension may continue, have and exercise the same powers of appointing sub-commissioners of pilotage, and of licensing pilots, and of establishing and altering rates of pilotage, within the district within which the authority so making default has previously appointed or licensed pilots, as it is by this act authorized to exercise in any district for which no particular provision is made by any act of Parliament or charter for the appointment of pilots, and shall also during such time as aforesaid have and exercise the same rights, title and powers to and in respect of any pilotage funds or other pilotage property which the said pilotage authorities would or might have had or exercised if not so suspended as aforesaid.

339. The Board of Trade shall without delay cause the several returns hereinbefore required to be made to such board to be laid before both Houses of Parliament.

Returns to be laid before Parliament.

Licensing of Masters and Mates (General).

Licensing of Masters and Mates (General).

340. The master or mate of any ship may, upon giving due notice, and consenting to pay the usual expenses, apply to any pilotage authority to be examined as to his capacity to pilot the ship of which he is master or mate, or any one or more ships belonging to the same owner, within any part of the district over which such pilotage authority has jurisdiction; and such master or mate shall, if such authority thinks fit, thereupon be examined; and if found competent a pilotage certificate shall be granted to him, containing his name, a specification of the ship or ships in respect of which he has been examined, and a description of the limits within which he is to pilot the same, such limits to be within such jurisdiction as aforesaid; and such certificate shall enable the person therein named to pilot the ship or any of the ships therein specified, of which he is acting as master or mate at the time, but no other, within the limits therein described, without incurring any penalties for the non-employment of a qualified pilot.

Master or mate, if examined and passed, to receive a pilotage certificate, enabling him to pilot particular ships.

341. The pilotage certificate so granted shall not be in force for more than one year, unless the same is renewed, which may from time to time be done by an indorsement under the hand of the secretary or other proper officer of the authority by whom such certificate was granted.

Renewal of pilotage certificate.

342. If upon complaint to the Board of Trade it appear to such board that any such authority as aforesaid has without reasonable cause refused or neglected to examine any master or mate who has applied to them for the purpose, or after he has passed the examination has without reasonable cause refused or neglected to grant him a pilotage certificate, or that the examination of any such master or mate has been unfairly or improperly conducted, or that any terms imposed or sought to be imposed by such authority are unfair or improper, or that any pilotage certificate granted by such authority has been improperly withdrawn, the Board of Trade may, if in its judgment the circumstances appear to require it, appoint persons to examine such master or mate, and if he is found competent may grant him a pilotage certificate, containing the same particulars as would have been inserted in any certificate granted by such pilotage authorities as aforesaid, upon such terms and conditions, and subject to such regulations, as such board may think fit; and such certificate shall have the same effect as if it had been granted by such pilotage authority as aforesaid; and such certi-

Board of Trade to examine and grant pilotage certificates to mates, on pilotage authorities refusing to do so.

cate shall be in force for one year, and may be renewed from year to year, either by the said authorities in manner hereinbefore mentioned, or by the Board of Trade, if such board thinks fit, such renewal to be indorsed on the said certificate, either by such person as the Board of Trade may appoint for the purpose, or in manner hereinbefore provided as to certificates granted by any pilotage authority.

Fees to be paid upon such certificates and the renewals thereof.

343. All masters or mates to or for whom any such pilotage certificates as aforesaid are granted or renewed by any pilotage authority shall pay to such authority, or as it directs, such fees upon their respective certificates and upon the renewals thereof, as are from time to time fixed for that purpose by such authority, with the consent of the Board of Trade; and all masters and mates to or for whom any such certificates are granted or renewed by the Board of Trade shall pay to such board, or as it directs, such fees upon their certificates and upon the renewals thereof as may be fixed by such board, so nevertheless that in the case of pilotage certificates granted or renewed by the Board of Trade such fees shall in no case be less than the fees payable by the qualified pilots in the same district upon their licences and the renewal thereof; and such fees shall in the case of certificates and renewals granted by pilotage authorities be applicable either to paying the expense of the examinations, or any other general expenses connected with pilotage incurred by such authorities, or to the pilots superannuation fund of the district (if any), or otherwise for the benefit of the pilots appointed by such authorities, as such authorities think fit; and such fees shall in the case of pilotage certificates granted or renewed by the Board of Trade be applicable to the expense of the examinations, and the surplus (if any) shall be applied for the benefit of the qualified pilots of the port or district to which such certificates apply, in such manner as such board thinks fit.

Power to withdraw pilotage.

344. If at any time it appears to the Board of Trade or to any pilotage authority that any master or mate to whom a pilotage certificate has been granted by such board or authority has been guilty of misconduct, or has shown himself incompetent to pilot his ship, such board or such authority (as the case may be) may thereupon withdraw his certificate, and such certificate shall thenceforth cease to be of any effect whatever.

Pilot Boats (General).

Pilot boats, how to be provided.

Pilot Boats (General).

345. All boats and ships regularly employed in the pilotage service of any district shall be approved and licensed by the pilotage authority of such district, who may, at their discretion, appoint and remove the masters of such boats and ships.

Characteristics of pilot boats.

346. Every pilot boat or ship shall be distinguished by the following characteristics; (that is to say,)

- (1.) A black colour painted or tarred outside, with the exception of such names and numbers as are hereinafter mentioned; or such other distinguishing colour or colours as the pilotage authority of the district, with the consent of the Board of Trade, directs:
- (2.) On her stern the name of the owner thereof and the port to which she belongs painted in white letters at least one inch broad and three inches long, and on each bow the number of the licence of such boat or ship:
- (3.) When afloat, a flag at the mast-head or on a sprit or staff, or in some other equally conspicuous situation; such flag to be of large dimensions compared with the size of the boat or ship carrying the same, and to be of two colours, the upper horizontal half white, and the lower horizontal half red:

And it shall be the duty of the master of such boat or ship to attend to the

following particulars : first, that the boat or ship possesses all the above characteristics ; secondly, that the aforesaid flag is kept clean and distinct, so as to be easily discerned at a proper distance ; and, lastly, that the names and numbers before mentioned are not at any time concealed ; and if default is made in any of the above particulars he shall incur a penalty not exceeding twenty pounds for each default.

347. Whenever any qualified pilot is carried off in a boat or ship not in the pilotage service he shall exhibit a flag of the above description, in order to show that such boat or ship has a qualified pilot on board ; and if he fails to do so, without reasonable cause, he shall incur a penalty not exceeding fifty pounds.

Qualified pilot to display flag though not in pilot boat.

348. If any boat or ship, not having a licensed pilot on board, displays a flag of the above-mentioned description, there shall be incurred for every such offence a penalty not exceeding fifty pounds, to be recovered from the owner or from the master of such boat or ship.

Penalty on ordinary boat displaying pilot flag.

Pilot Licences (General).

Pilot Licences (General).

349. Every qualified pilot on his appointment shall receive a licence, containing his name and usual place of abode, together with a description of his person, and a specification of the limits within which he is qualified to act : and it shall be the duty of the principal officer of customs at the place at or nearest to which any qualified pilot may reside, upon his request, to register his licence ; and no qualified pilot shall be entitled to act as such until his licence is so registered ; and any qualified pilot, acting beyond the limits for which he is qualified by his licence shall be considered as an unqualified pilot.

Registry of pilot licence.

350. Every qualified pilot shall, upon receiving his licence, be furnished with a copy of such part of this act as relates to pilotage, together with a copy of the rates, bye-laws and regulations established within the district for which he is licensed ; and he shall produce such copies to the master of any ship, or other person employing him, when required to do so, under a penalty in case of default not exceeding five pounds.

Copies of regulations to be furnished to qualified pilot, and to be produced by him.

351. Every qualified pilot, while acting in that capacity, shall be provided with his licence, and produce the same to every person by whom he is employed, or to whom he tenders his services as pilot ; and if he refuses to do so at the request of such person, he shall incur for each offence a penalty not exceeding ten pounds, and shall be subject to suspension or dismissal by the pilotage authority by whom he is licensed.

Qualified pilot to produce licence to employer.

352. Every qualified pilot, when required by the pilotage authority who appointed him, shall produce or deliver up his licence ; and on the death of any qualified pilot the person into whose hands his licence happens to fall shall without delay transmit the same to the pilotage authority who appointed the deceased pilot ; and any pilot or person failing to comply with the provisions of this section shall incur a penalty not exceeding ten pounds.

Licences to be delivered up, when required, and returned on death.

Compulsory Pilotage (General).

Compulsory Pilotage (General).

353. Subject to any alteration to be made by any pilotage authority in pursuance of the power hereinbefore in that behalf given, the employment of pilots shall continue to be compulsory in all districts in which the same was by law compulsory immediately before the time when this act comes into operation ; and all exemptions from compulsory pilotage then existing within such districts shall also continue in force ; and every master of any unexempted ship navigating within any such district who, after a qualified

Compulsory pilotage, in what mode to be enforced.

pilot has offered to take charge of such ship or has made a signal for that purpose, either himself pilots such ship without possessing a pilotage certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, and every master of any exempted ship navigating within any such district who after a qualified pilot has offered to take charge of such ship or has made a signal for that purpose employs or continues to employ an unqualified pilot to pilot her, shall for every such offence incur a penalty of double the amount of pilotage demandable for the conduct of such ship.

Home trade passenger ships to employ qualified pilots, unless they have certificated masters or mates.

354. The master of every ship carrying passengers between any place situate in the United Kingdom, or the islands of Guernsey, Jersey, Sark, Alderney and Man, and any other place so situate, when navigating upon any waters situate within the limits of any district for which pilots are licensed by any pilotage authority under the provisions of this or of any other act, or upon any part thereof so situate, shall, unless he or his mate has a pilotage certificate enabling such master or mate to pilot the said ship within such district, granted under the provisions hereinbefore contained, or such certificate as next hereinafter mentioned, being a certificate applicable to such district and to such ship, employ a qualified pilot to pilot his ship; and if he fails so to do he shall for every offence incur a penalty not exceeding one hundred pounds.

Certificates, how to be granted to such masters and mates.

355. Any master or mate of a ship which by the last preceding section is made subject to compulsory pilotage may apply to the Board of Trade for a certificate, and the Board of Trade shall thereupon, on satisfactory proof of his having continuously piloted any ship within the limits of any pilotage district, or of any part or parts thereof, for two years prior to the commencement of this act, or upon satisfactory proof by examination of his competency, or otherwise, as it may deem expedient, cause to be granted to him, or to be indorsed on any certificate of competency or service obtained by him under the third part of this act, a certificate to the effect that he is authorized to pilot any ship or ships belonging to the same owner, and of a draft of water not greater than such draft as may be specified in the certificate within the limits aforesaid; and the said certificate shall remain in force for such time as the Board of Trade directs, and shall enable the master or mate therein named to conduct the ship or ships therein specified within the limits therein described to the same extent as if the last preceding section had not been passed, but not further or otherwise; and every such master or mate shall, upon applying for such certificate or for any renewal thereof, pay to the Board of Trade, or as it directs, such fees not exceeding the fees payable on an examination for a master's certificate of competency under the third part of this act as the Board of Trade directs; and such fees shall be applied in the same manner in which the fees payable on such last-mentioned examination are made applicable.

Rights, Privileges and Remuneration of Pilots (General).

Qualified pilot unable to board, when entitled to pilotage.

Rights, Privileges and Remuneration of Pilots (General).

356. If any boat or ship, having a qualified pilot on board, leads any ship which has not a qualified pilot on board when such last-mentioned ship cannot from particular circumstances be boarded, the pilot so leading such last-mentioned ship shall be entitled to the full pilotage for the distance run as if he had actually been on board and had charge of such ship.

Allowance to qualified pilot taken out of his district.

357. No pilot, except under circumstances of unavoidable necessity, shall without his consent be taken to sea or beyond the limits for which he is licensed in any ship whatever; and every pilot so taken under circumstances of unavoidable necessity or without his consent shall be entitled, over and above his pilotage, to the sum of ten shillings and sixpence a day, to be computed from and inclusive of the day on which such ship passes

the limit to which he was engaged to pilot her up to and inclusive of the day of his being returned in the said ship to the place where he was taken on board, or up to and inclusive of such day as will allow him, if discharged from the ship, sufficient time to return thereto; and in such last-mentioned case he shall be entitled to his reasonable travelling expenses.

358. Any qualified pilot demanding or receiving, and also any master offering or paying to any pilot, any other rate in respect of pilotage services, whether greater or less, than the rate for the time being demandable by law, shall for each offence incur a penalty not exceeding ten pounds.

Penalty on qualified pilot receiving or master offering improper rate.

359. If any master, on being requested by any qualified pilot having the charge of his ship to declare her draught of water, refuses to do so, or himself makes or is privy to any other person making a false declaration to such pilot as to such draught, he shall incur a penalty for every such offence not exceeding double the amount of pilotage which would have been payable to the pilot making such request; and if any master or other person interested in a ship makes or is privy to any other person making any fraudulent alteration in the marks on the stern or stem post of such ship denoting her draught of water, the offender shall incur a penalty not exceeding five hundred pounds.

Penalty on making a false declaration as to draught of ship or falsifying marks.

360. A qualified pilot may supersede an unqualified pilot, but it shall be lawful for the master to pay to such unqualified pilot a proportionate sum for his services, and to deduct the same from the charge of the qualified pilot; and in case of dispute the pilotage authority by whom the qualified pilot is licensed shall determine the proportionate sums to which each party is entitled.

Power of qualified pilot to supersede unqualified pilot.

361. An unqualified pilot assuming or continuing in the charge of any ship after a qualified pilot has offered to take charge of her, or using a licence which he is not entitled to use for the purpose of making himself appear to be a qualified pilot, shall for each offence incur a penalty not exceeding fifty pounds.

Penalty on unqualified person acting as pilot.

362. An unqualified pilot may, within any pilotage district, without subjecting himself or his employer to any penalty, take charge of a ship as pilot under the following circumstances; (that is to say,)

Occasions on which unlicensed persons may act as pilots.

When no qualified pilot has offered to take charge of such ship, or made a signal for that purpose; or

When a ship is in distress or under circumstances making it necessary for the master to avail himself of the best assistance which can be found at the time; or

For the purpose of changing the moorings of any ship in port, or of taking her into or out of any dock, in cases where such act can be done by any unqualified pilot without infringing the regulations of the port or any orders which the harbour master is legally empowered to give.

363. The following persons shall be liable to pay pilotage dues for any ship for which the services of a qualified pilot are obtained; (that is to say,) the owner or master, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge, as to pilotage inwards, and in the port from which she clears out as to pilotage outwards; and in default of payment such pilotage dues may be recovered in the same manner as penalties of the like amount may be recovered by virtue of this act; but such recovery shall not take place until a previous demand thereof has been made in writing, and the dues so demanded have remained unpaid for seven days after the time of such demand being made.

Liability for and recovery of pilotage dues.

Power for consignees to retain pilotage dues paid by them.

364. Every consignee and agent (not being the owner or master) hereby made liable for the payment of pilotage dues in respect of any ship may, out of any monies in his hands received on account of such ship or belonging to the owner thereof, retain the amount of all dues so paid by him, together with any reasonable expenses he may have incurred by reason of such payment or liability.

*Offences of Pilots
(General).*

Penalties on qualified pilot:

exercising certain trades;

offending against revenue;

guilty of corrupt practices;

losing licence; acting when suspended; acting when drunk; unnecessarily causing expense;

declining to go off;

unnecessarily cutting or slipping cable; refusing to conduct ship into port;

quitting ship.

Offences of Pilots (General).

365. If any qualified pilot commits any of the following offences, (that is to say,)

- (1.) Keeps himself, or is interested in keeping by any agent, servant, or other person, any public house or place of public entertainment, or sells or is interested in selling any wine, spirituous liquors, tobacco or tea:
- (2.) Commits any fraud or other offence against the revenues of customs or excise or the laws relating thereto:
- (3.) Is in any way directly or indirectly concerned in any corrupt practices relating to ships, their tackle, furniture, cargoes, crews or passengers, or to persons in distress at sea or by shipwreck, or to their monies, goods or chattels:
- (4.) Lends his licence:
- (5.) Acts as pilot whilst suspended:
- (6.) Acts as pilot when in a state of intoxication:
- (7.) Employs or causes to be employed on board any ship of which he has the charge any boat, anchor, cable or other store, matter or thing beyond what is necessary for the service of such ship, with the intent to enhance the expenses of pilotage for his own gain or for the gain of any other person:
- (8.) Refuses or wilfully delays, when not prevented by illness or other reasonable cause, to take charge of any ship within the limits of his licence upon the signal for a pilot being made by such ship, or upon being required to do so by the master, owner, agent or consignee thereof, or by any officer of the pilotage authority by whom such pilot is licensed, or by any principal officer of customs:
- (9.) Unnecessarily cuts or slips or causes to be cut or slipped any cable belonging to any ship:
- (10.) Refuses, on the request of the master, to conduct the ship of which he has the charge into any port or place into which he is qualified to conduct the same, except on reasonable ground of danger to the ship:
- (11.) Quits the ship of which he has the charge, without the consent of the master, before the service for which he was hired has been performed:

He shall for each such offence, in addition to any liability for damages at the suit of the person aggrieved, incur a penalty not exceeding one hundred pounds, and be liable to suspension or dismissal by the pilotage authority by whom he is licensed; and every person who procures, abets or connives at the commission of any such offence shall likewise, in addition to any such liability for damages as aforesaid, incur a penalty not exceeding one hundred pounds, and, if a qualified pilot, shall be liable to suspension or dismissal by the pilotage authority by whom he is licensed.

Penalty on pilot endangering ship, life or limb.

366. If any pilot, when in charge of any ship, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, does any act tending to the immediate loss, destruction or serious damage of such ship, or tending immediately to endanger the life or limb of any person on board such ship; or if any pilot, by wilful breach of duty or by neglect of duty, or by reason of drunkenness, refuses or omits to do any lawful act proper and requisite to be done by him for preserving such ship from loss, destruction

or serious damage, or for preserving any person belonging to or on board of such ship from danger to life or limb, the pilot so offending shall for each such offence be deemed guilty of a misdemeanor, and, if a qualified pilot, also be liable to suspension and dismissal by the authority by which he is licensed.

367. If any person, by wilful misrepresentation of circumstances upon which the safety of a ship may depend, obtains or endeavours to obtain the charge of such ship, such person, and every other person procuring, abetting or conniving at the commission of such offence, shall, in addition to any liability for damages at the suit of the party aggrieved, incur a penalty not exceeding one hundred pounds, and if the offender is a qualified pilot, he shall also be liable to suspension or dismissal by the pilotage authority by which he is licensed.

Penalty on pilot in charge of a ship doing her wilful injury.

General Power of Trinity House.

368. The Trinity House may, in exercise of the general power hereinbefore given to all pilotage authorities of doing certain things in relation to pilotage matters, alter such of the provisions hereinafter contained as are expressed to be subject to alteration by them in the same manner and to the same extent as they might have altered the same if such provisions had been contained in any previous act of Parliament instead of in this act.

General Power of Trinity House.

Power of Trinity House to alter regulations.

Sub-Commissioners and Pilots (Trinity House).

369. The Trinity House shall continue to appoint sub-commissioners, not being more than five nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of her Majesty in council, but not otherwise, appoint like sub-commissioners for any other district in which no particular provision is made by any act of Parliament or charter for the appointment of pilots; but no pilotage district already under the authority of any sub-commissioners appointed by the Trinity House shall be extended, except with such consent as aforesaid, and no sub-commissioners so appointed shall be deemed to be pilotage authorities within the meaning of this act.

Sub-Commissioners and Pilots (Trinity House).

Power of Trinity House to appoint Sub-Commissioners.

370. The Trinity House shall continue, after due examination by themselves or their sub-commissioners, to appoint and license under their common seal pilots for the purpose of conducting ships within the limits following or any portion of such limits; (that is to say,)

Trinity House to license pilots to act within certain limits.

- (1.) "The London District," comprising the waters of the Thames and Medway as high as London Bridge and Rochester Bridge respectively, and also the seas and channels leading thereto or therefrom as far as Orfordness to the north and Dungeness to the south; so nevertheless, that no pilot shall be hereafter licensed to conduct ships both above and below Gravesend:
- (2.) "The English Channel District," comprising the seas between Dungeness and the Isle of Wight:
- (3.) "The Trinity House Outport Districts," comprising any pilotage district for the appointment of pilots within which no particular provision is made by any act of Parliament or charter.

371. Subject to any alteration to be made by the Trinity House, the names of all pilots licensed by the Trinity House shall be published in manner following; (that is to say,)

Publication of notice of licences of pilots by the Trinity House of pilots.

- (1.) The Trinity House shall at their house in London fix up a notice specifying the name and usual place of abode of every pilot so licensed, and the limits within which he is licensed to act:

- (2.) The Trinity House shall transmit a copy of such notice to the Commissioners of Customs in London, and to the principal officers of customs resident at all ports within the limits for which such pilot is licensed ; and such notice shall be posted up by the Commissioners at the Custom House in London, and by such officers at the custom houses of the ports at which they are respectively resident.

Bonds to be given.

372. Subject to any alteration to be made by the Trinity House, every Trinity House pilot on his appointment shall execute a bond for one hundred pounds conditioned for the due observance on his part of the regulations and bye-laws of the Trinity House, such bond to be free from stamp duty, and from any other charge except the actual expense for preparing the same.

Liability limited.

373. No qualified pilot who has executed such bond as is hereinbefore mentioned shall be liable for neglect or want of skill beyond its penalty and the amount of pilotage payable to him in respect of the voyage on which he is engaged.

Continuance and renewal of licences.

374. Subject to any alteration to be made by the Trinity House, no licence granted by them shall continue in force beyond the thirty-first day of January next ensuing the date of such licence, but the same may, upon the application of the pilot holding such licence, be renewed on such thirty-first day of January in every year, or any subsequent day, by indorsement under the hand of the secretary of the Trinity House, or such other person as may be appointed by them for that purpose.

Power to revoke and suspend licences.

375. The Trinity House shall have power to revoke or suspend the licence of any pilot appointed by them, in such manner and at such time as they think fit.

Compulsory Pilotage (Trinity House).

Compulsory Pilotage (Trinity House).

Penalty on masters of ships employing unlicensed pilots, or acting as pilot.

376. Subject to any alteration to be made by the Trinity House, and to the exemptions hereinafter contained, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are the London district and the Trinity House outport districts, as hereinbefore defined ; and the master of every ship navigating within any part of such district or districts, who, after a qualified pilot has offered to take charge of such ship, or has made a signal for that purpose, either himself pilots such ship without possessing a certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, shall for every such offence, in addition to the penalty hereinbefore specified, if the Trinity House certify in writing under their common seal that the prosecutor is to be at liberty to proceed for the recovery of such additional penalty, incur an additional penalty not exceeding five pounds for every fifty tons burden of such ship.

Trinity House to make regulations for a constant supply of qualified pilots at Dungeness.

377. Subject to any alteration to be made by the Trinity House, a sufficient number of qualified pilots shall always be ready to take charge of ships coming from the westward past Dungeness ; and the Trinity House shall, by bye-law to be made in the same manner as other bye-laws made under the powers herein contained, make such regulations with respect to the pilots under their control as may be necessary in order to provide for an unintermitted supply of qualified pilots for such ships, and to insure their constant attendance upon and due performance of their duty both by night and day, whether by cruising between the South Foreland and Dungeness, or by going off from shore upon signals made for the purpose, or by both of such means, or by any other means, and whether in rotation or otherwise, as the Trinity House think fit.

378. Subject to any alteration to be made by the Trinity House, every master of any ship coming from the westward, and bound to any place in the rivers Thames and Medway, (unless she has a qualified pilot on board or is exempted from compulsory pilotage,) shall, on the arrival of such ship off Dungeness, and thenceforth until she has passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, or until a qualified pilot has come on board, display and keep flying the usual signal for a pilot; and if any qualified pilot is within hail, or is approaching and within half a mile, and has the proper distinguishing flag flying in his boat, such master shall, by heaving-to in proper time or shortening sail, or by any practicable means consistent with the safety of his ship, facilitate such pilot getting on board, and shall give the charge of piloting his ship to such pilot; or if there are two or more of such pilots offering at the same time, to such one of them as may, according to the regulations for the time being in force, be entitled or required to take such charge; and if any such master fails to display or keep flying the usual signal for a pilot in manner hereinbefore required, or to facilitate any such qualified pilot as aforesaid getting on board as hereinbefore required, or to give the charge of piloting his ship to such pilot as hereinbefore mentioned in that behalf, he shall incur a penalty not exceeding double the sum which might have been demanded for the pilotage of his ship, such penalty to be paid to the Trinity House, and to be carried to the account of the Trinity House Pilot Fund.

Ship coming past Dungeness not having pilot on board to take the first qualified pilot who offers.

Penalty on masters failing to display usual signal for pilot.

379. The following ships, when not carrying passengers, shall be exempted from compulsory pilotage in the London district, and in the Trinity House outport districts; (that is to say,)

Exemptions from compulsory pilotage.

- (1.) Ships employed in the coasting trade of the United Kingdom :
- (2.) Ships of not more than sixty tons burden :
- (3.) Ships trading to Boulogne or to any place in Europe north of Boulogne :
- (4.) Ships from Guernsey, Jersey, Alderney, Sark or Man, which are wholly laden with stone being the produce of those islands :
- (5.) Ships navigating within the limits of the port to which they belong :
- (6.) Ships passing through the limits of any pilotage district on their voyages between two places both situate out of such limits, and not being bound to any place within such limits nor anchoring therein.

Rates of Pilotage (Trinity House).

Rates of Pilotage (Trinity House).

380. Subject to any alteration to be made by the Trinity House, there shall continue to be paid to all Trinity House pilots, in respect of their pilotage services, such dues as are immediately before the time when this act comes into operation payable to them in respect of such services.

Rates of pilotage.

381. Subject to any alteration to be made by the Trinity House, and notwithstanding anything hereinbefore contained, there shall be paid in respect of all foreign ships trading to and from the port of London, and not exempted from pilotage, the following pilotage dues; that is to say, as to ships inwards, the full amount of dues for the distance piloted, and as to ships outwards, the full amount of dues for the distance required by law; and payment of such pilotage dues shall be made to the collector of customs in the port of London by some one or more of the following persons, that is to say, the master or other person having the charge of such ship, or the consignees or agents thereof who have paid or made themselves liable to pay any other charge for such ship in the said port of London; and such pilotage may be recovered in the same manner as other pilotage dues are hereinbefore declared to be recoverable.

Payment of pilotage due from foreign ships trading to and from the port of London.

382. Subject to any alteration to be made by the Trinity House, the said collector of customs shall, on receiving any pilotage dues in respect

Certificate of payment of pilotage to be given.

- (2.) The Trinity House shall transmit a copy of such notice to the Commissioners of Customs in London, and to the principal officers of customs resident at all ports within the limits for which such pilot is licensed; and such notice shall be posted up by the Commissioners at the Custom House in London, and by such officers at the custom houses of the ports at which they are respectively resident.

Bonds to be given.

372. Subject to any alteration to be made by the Trinity House, every Trinity House pilot on his appointment shall execute a bond for one hundred pounds conditioned for the due observance on his part of the regulations and bye-laws of the Trinity House, such bond to be free from stamp duty, and from any other charge except the actual expense for preparing the same.

Liability limited.

373. No qualified pilot who has executed such bond as is hereinbefore mentioned shall be liable for neglect or want of skill beyond its penalty and the amount of pilotage payable to him in respect of the voyage on which he is engaged.

Continuance and renewal of licences.

374. Subject to any alteration to be made by the Trinity House, no licence granted by them shall continue in force beyond the thirty-first day of January next ensuing the date of such licence, but the same may, upon the application of the pilot holding such licence, be renewed on such thirty-first day of January in every year, or any subsequent day, by indorsement under the hand of the secretary of the Trinity House, or such other person as may be appointed by them for that purpose.

Power to revoke and suspend licences.

375. The Trinity House shall have power to revoke or suspend the licence of any pilot appointed by them, in such manner and at such time as they think fit.

Compulsory Pilotage (Trinity House).

Compulsory Pilotage (Trinity House).

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376. Subject to any alteration to be made by the Trinity House, and to the exemptions hereinafter contained, the pilotage districts of the Trinity House within which the employment of pilots is compulsory are the London district and the Trinity House outport districts, as hereinbefore defined; and the master of every ship navigating within any part of such district or districts, who, after a qualified pilot has offered to take charge of such ship, or has made a signal for that purpose, either himself pilots such ship without possessing a certificate enabling him so to do, or employs or continues to employ an unqualified person to pilot her, shall for every such offence, in addition to the penalty hereinbefore specified, if the Trinity House certify in writing under their common seal that the prosecutor is to be at liberty to proceed for the recovery of such additional penalty, incur an additional penalty not exceeding five pounds for every fifty tons burden of such ship.

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378. Subject to any alteration to be made by the Trinity House, every master of any ship coming from the westward, and bound to any place in the rivers Thames and Medway, (unless she has a qualified pilot on board or is exempted from compulsory pilotage,) shall, on the arrival of such ship off Dungeness, and thenceforth until she has passed the south buoy of the Brake, or a line to be drawn from Sandown Castle to the said buoy, or until a qualified pilot has come on board, display and keep flying the usual signal for a pilot; and if any qualified pilot is within hail, or is approaching and within half a mile, and has the proper distinguishing flag flying in his boat, such master shall, by heaving-to in proper time or shortening sail, or by any practicable means consistent with the safety of his ship, facilitate such pilot getting on board, and shall give the charge of piloting his ship to such pilot; or if there are two or more of such pilots offering at the same time, to such one of them as may, according to the regulations for the time being in force, be entitled or required to take such charge; and if any such master fails to display or keep flying the usual signal for a pilot in manner hereinbefore required, or to facilitate any such qualified pilot as aforesaid getting on board as hereinbefore required, or to give the charge of piloting his ship to such pilot as hereinbefore mentioned in that behalf, he shall incur a penalty not exceeding double the sum which might have been demanded for the pilotage of his ship, such penalty to be paid to the Trinity House, and to be carried to the account of the Trinity House Pilot Fund.

Ship coming past Dungeness not having pilot on board to take the first qualified pilot who offers.

Penalty on masters failing to display usual signal for pilot.

379. The following ships, when not carrying passengers, shall be exempted from compulsory pilotage in the London district, and in the Trinity House outport districts; (that is to say,)

Exemptions from compulsory pilotage.

- (1.) Ships employed in the coasting trade of the United Kingdom:
- (2.) Ships of not more than sixty tons burden:
- (3.) Ships trading to Boulogne or to any place in Europe north of Boulogne:
- (4.) Ships from Guernsey, Jersey, Alderney, Sark or Man, which are wholly laden with stone being the produce of those islands:
- (5.) Ships navigating within the limits of the port to which they belong:
- (6.) Ships passing through the limits of any pilotage district on their voyages between two places both situate out of such limits, and not being bound to any place within such limits nor anchoring therein.

Rates of Pilotage (Trinity House).

Rates of Pilotage (Trinity House).

380. Subject to any alteration to be made by the Trinity House, there shall continue to be paid to all Trinity House pilots, in respect of their pilotage services, such dues as are immediately before the time when this act comes into operation payable to them in respect of such services.

Rates of pilotage.

381. Subject to any alteration to be made by the Trinity House, and notwithstanding anything hereinbefore contained, there shall be paid in respect of all foreign ships trading to and from the port of London, and not exempted from pilotage, the following pilotage dues; that is to say, as to ships inwards, the full amount of dues for the distance piloted, and as to ships outwards, the full amount of dues for the distance required by law; and payment of such pilotage dues shall be made to the collector of customs in the port of London by some one or more of the following persons, that is to say, the master or other person having the charge of such ship, or the consignees or agents thereof who have paid or made themselves liable to pay any other charge for such ship in the said port of London; and such pilotage may be recovered in the same manner as other pilotage dues are hereinbefore declared to be recoverable.

Payment of pilotage due from foreign ships trading to and from the port of London.

382. Subject to any alteration to be made by the Trinity House, the said collector of customs shall, on receiving any pilotage dues in respect

Certificate of payment of pilotage to be given.

of foreign ships, give to the person paying the same a receipt in writing ; and no officer of customs in the port of London shall grant a clearance or transire for any such foreign ship as aforesaid without the production of such receipt ; and if any such ship attempts to go to sea without such clearance or transire, any such officer may detain her until the said receipt is produced.

Application of such monies by Trinity House.

383. Subject to any alteration to be made by the Trinity House, the said collector shall pay over to the Trinity House the pilotage dues received by him in respect of any foreign ship ; and the Trinity House shall apply the same in manner following :

In the first place, in paying to any pilot who may bring sufficient proof of his having had the charge of such ship such dues as would have been payable to him for such pilotage service if the ship had been a British ship, after deducting therefrom the poundage due to the Trinity House :

In the second place, in paying to any unlicensed person who may bring sufficient proof of his having, in the absence of a licensed pilot, had the charge of such ship, such amount as the Trinity House may think proper, not exceeding the amount which would under similar circumstances have been payable to a licensed pilot, after deducting poundage :

And, lastly, shall pay over to the Trinity House Pilots Fund the residue, together with all poundage deducted as aforesaid.

Settlement of difference as to draught of ship.

384. Whenever any difference arises between the master and the qualified pilot of any ship trading to or from the port of London as to her draught of water, the Trinity house shall upon application by either party, made, in case of a ship inward-bound, within twelve hours after her arrival or at some time before she begins to discharge her cargo, and in the case of a ship outward-bound before she quits her moorings, appoint some proper officer who shall measure the ship, and settle the difference accordingly : and there shall be paid to the officer measuring such ship, by the party against whom he decides, the following sums ; (that is to say,) one guinea if the ship be below, and half a guinea if the ship be above the entrance of the London Docks at Wapping.

Pilot Fund (Trinity House).

Payments to be made to the pilot fund.

Pilot Fund (Trinity House).

385. Subject to any alteration to be made by the Trinity House, there shall continue to be paid to them, and carried over to the Trinity House Pilot Fund, the sums of money following ; (that is to say,)

- (1.) A poundage of sixpence in the pound upon the pilotage earnings of all pilots licensed by the Trinity House :
- (2.) A sum of three pounds three shillings to be paid on the first day of January in every year by every person licensed by the Trinity House to act as pilot in any district not under the superintendence of sub-commissioners, or in any part of such district :

And any qualified pilot giving a false account of his earnings, or making default in payment of any sum due from him under this section, shall forfeit double the amount payable, and shall further be liable, at the discretion of the Trinity House, to suspension or dismissal.

Application of fund.

386. Subject to any prior charges that may be subsisting thereon by virtue of any act or acts of Parliament or otherwise, the said Trinity House Pilot Fund shall be chargeable in the first instance with such expenses as the Trinity House may duly incur in performance of their duties in respect of pilots and pilotage, and after payment thereof shall, subject to any alteration to be made by the Trinity House, be administered by the Trinity House for the benefit of such pilots licensed by them after the first day of

October, one thousand eight hundred and fifty-three, as are incapacitated for the performance of their duty by reason of age, infirmity or accident, or of the widows and children of pilots so licensed, or of such incapacitated pilots only.

Appointment of Sub-Commissioners by Trinity Houses of Hull and Newcastle.

Appointment of Sub-Commissioners by Trinity Houses of Hull and Newcastle.

387. The two corporations of the Trinity Houses of the ports of Hull and Newcastle shall continue to appoint sub-commissioners, not being more than seven nor less than three in number, for the purpose of examining pilots in all districts in which they have been used to make such appointments, and may, with the consent of her Majesty in council, but not otherwise, appoint like sub-commissioners for any other district situate within their respective jurisdictions; but no pilotage district already under the authority of any sub-commissioners appointed by either of the said corporations shall be extended, except with such consent as aforesaid; and no sub-commissioners appointed or to be appointed by the Trinity Houses of Hull and Newcastle shall be deemed to be pilotage authorities within the meaning of this act, nor shall anything in this act contained be held to confer upon the commissioners for regulating the pilotage of the port of Kingston-upon-Hull and of the river Humber any jurisdiction of a different nature or character from that which they have heretofore exercised.

Power to Trinity Houses of Hull and Newcastle to appoint sub-commissioners.

Saving of Owners and Masters Rights.

Saving of Owners and Masters Rights.

388. No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship, within any district where the employment of such pilot is compulsory by law.

Limitation of liability of owner where pilotage is compulsory.

PART VI.

LIGHTHOUSES.

Management of Lighthouses.

Management of Lighthouses.

389. Subject to the provisions hereinafter contained, and subject also to any powers or rights now lawfully enjoyed or exercised by any person or body of persons having by law or usage authority over local lighthouses, buoys or beacons, hereinafter termed "local authorities," the superintendence and management of all lighthouses, buoys and beacons shall be vested in the following bodies; (that is to say,)

Management of Lighthouses, buoys and beacons to be in Trinity House Commissioners of Northern lighthouses, and port of Dublin Corporation.

In England and Wales, and the islands of Jersey, Guernsey, Sark and Alderney, and the adjacent seas and islands, and in Heligoland and Gibraltar, in the Trinity House:

In Scotland and the adjacent seas and islands, and in the Isle of Man, in the Commissioners of Northern Lighthouses hereinafter mentioned:

In Ireland and the adjacent seas and islands, in the Port of Dublin Corporation:

And subject to the provisions hereinafter contained, the said Trinity House commissioners and corporation (hereinafter termed "general lighthouse authorities") shall respectively continue to hold and maintain all property now vested in them in that behalf in the same manner and for the same purposes as they have hitherto held and maintained the same.

390. The persons holding the following offices shall be a body corporate under the name of the Commissioners of Northern Lighthouses; (that is to say,)

Incorporation of Commissioners of Northern Lighthouses.

(1.) The Lord Advocate and the Solicitor-General for Scotland:

- (2.) The Lords Provosts of Edinburgh and Glasgow, and the Provosts of the cities of Aberdeen, Inverness and Campbeltown :
 - (3.) The eldest Bailies of Edinburgh and Glasgow :
 - (4.) The Sheriffs of the counties of Edinburgh, Lanark, Renfrew, Bute, Argyle, Inverness, Ross, Orkney, Caithness, Aberdeen, Ayr, Fife, Forfar, Wigton, Sutherland, Kincardine, Kirkcudbright and Elgin :
- And shall have a common seal ; and any five of such commissioners shall constitute a quorum, and shall have power to do all such matters and things as might be done by the whole body of commissioners.

Power to elect certain new members.

391. In addition to the persons above mentioned, it shall be lawful for the said commissioners at any time after this act comes into operation to elect the provost or chief magistrate of any royal or parliamentary burgh on or near any part of the coasts of Scotland and the sheriff of any county abutting on such coasts.

Trinity House may inspect lighthouses in Scotland and Ireland.

392. The Trinity House, their engineers, workmen and servants, may at all times enter any lighthouses within the jurisdiction of the said commissioners or corporation to view the condition thereof or otherwise for the purposes of this act.

Board of Trade may appoint persons to inspect lighthouses, &c.

393. The Board of Trade may, upon complaint to the effect that any lighthouse, buoy or beacon under the management of any of the said general lighthouse authorities, or any work connected therewith, is inefficient or improperly managed or unnecessary, authorize persons to inspect the same ; and every person so authorized may inspect the same accordingly, and make such inquiries in respect thereof and of the management thereof, as he may think fit ; and all officers and others having the care of such lighthouses, buoys or beacons or concerned in the management thereof, shall furnish all such information and explanations in relation thereto as he may require ; and the said general lighthouse authorities and their respective officers shall at all times give to the Board of Trade all such returns, explanations or information in relation to the lighthouses, buoys or beacons within their jurisdiction and the management thereof, as such Board may from time to time require.

Power to general lighthouse authorities to control local authorities.

394. Each of the said general lighthouse authorities, upon giving due notice of their intention, shall have power, with the sanction of the Board of Trade, to compel any local authority having jurisdiction in the matter of lighthouses, buoys or beacons at any place situate within the jurisdiction of such general lighthouse authority, to lay down buoys, or to remove or discontinue any existing lighthouse or beacon, or to make any variation in the character of any lighthouse or in the mode of exhibiting lights therein ; and no such local authority as aforesaid shall erect any new lighthouse, or remove or discontinue any lighthouse, or vary the character of any lighthouse or the mode of exhibiting lights therein, without the sanction of the general lighthouse authority within whose jurisdiction the same is situate.

In case of default by local bodies local lighthouses may be transferred to general lighthouse authorities.

395. If any local authority having power to erect, maintain or place any local lighthouse, buoy or beacon at any place within the jurisdiction of one of the said general lighthouse authorities fails so to do, or fails to obey any direction given by such authority under the last preceding section, her Majesty may, upon application from such general lighthouse authority, by order in council direct that such power as aforesaid shall be transferred to such last-mentioned authority ; and such power, together with all powers of levying and receiving dues in respect of such lighthouse, buoy or beacon, shall thereupon become vested in such last-mentioned authority ; and such lighthouse, with its appurtenances, and also such buoy or beacon, and all dues leviable in respect thereof, shall thenceforth be subject in all respects

to the same regulations as other lighthouses and light dues, buoys and beacons provided for by this act.

Light Dues.

Light Dues.

396. Subject to any alterations to be made under the powers hereinafter contained, the said general lighthouse authorities shall, in respect of the existing lighthouses, buoys or beacons within their respective jurisdictions, continue to levy dues, hereinafter called light dues, after the rate at which the same are levied at the time when this act comes into operation; and such light dues shall be payable in respect of all ships whatever, except ships belonging to her Majesty, and ships hereby exempted from payment thereof.

Dues to be levied.

397. Her Majesty may, by and with the advice of her privy council, from time to time reduce all or any of the dues for the time being payable in respect of existing or future lighthouses, buoys or beacons for the time being under the management of the said general lighthouse authorities; and may also by and with the like advice from time to time increase or vary any of such dues, so that no dues payable in respect of any lighthouse, buoy or beacon existing at the time when this act comes into operation are made to exceed the amount which has at any period previous to such time been received in respect thereof, or to which the said dues might during any part of such period as last aforesaid lawfully have been raised.

Light dues to be subject to revision by her Majesty in council.

398. Each of the said general lighthouse authorities shall have power, with the consent of her Majesty in council, to do any of the following things; (that is to say,)

Powers of general lighthouse authorities to alter and regulate dues.

To exempt any ship or any classes of ships from the payment of light dues receivable by such authority, and to annex any terms or conditions to such exemptions:

To alter the times, places and modes at and in which the light dues receivable by such authority are payable:

To substitute any other dues or class of dues, whether by way of annual payment or otherwise, in respect of any ships or classes of ships, for the dues payable to such authority for the time being.

399. Tables of all light dues, and a copy of the regulations for the time being in force in respect thereof, shall be posted up at all custom houses within the United Kingdom; and each of the said general lighthouse authorities shall from time to time as occasion requires furnish copies of such tables and regulations to the Commissioners of Customs in London, and to the principal officers of customs resident at all places where light dues are collected on account of such lighthouse authority; and such copies shall be posted up by the Commissioners at the Custom House in London, and by such officers at the custom houses of the places at which they are respectively resident.

Publication of dues and regulations.

400. A receipt for light dues shall be given by the person appointed to collect the same to every person paying the same, and no officer of customs at any port where light dues are payable in respect of any ship shall grant a clearance or transire for any such ship unless the receipt for the same is produced to him.

Ship not to be cleared without production of receipt for light dues.

401. If the owner or master of any ship fails on demand of the authorized collector to pay the light dues due in respect thereof, it shall be lawful for such collector, in addition to any other remedy which he or the authority by whom he is appointed is entitled to use, to enter upon such ship, and distrain the goods, guns, tackle or any other thing of or belonging to or on board such ship, and to detain such distress until the said light dues are

Power of distress for light dues.

paid; and if payment of the same is not made within the period of three days next ensuing such distress, he may, at any time during the continuance of such nonpayment, cause the same to be appraised by two sufficient persons or sworn appraisers, and thereupon sell the same, and apply the proceeds in payment of the light dues due, together with all reasonable expenses incurred by him under this section, paying the surplus (if any) on demand to the said owner or master.

Light dues, how to be paid over and accounted for.

402. Every person appointed to collect light dues by any of the said general lighthouse authorities shall collect all light dues payable at the port or place at which he is so appointed, whether the same be collected on account of such last-mentioned authority or of the other general lighthouse authorities, and shall pay over to the general lighthouse authority by whom he was appointed, or as it directs, the whole amount of light dues received by him; and the authority so receiving the same shall keep accounts thereof, and shall cause the same to be remitted to her Majesty's paymaster-general in such manner as the Board of Trade directs.

Application of light dues.

403. All light dues coming to the hands of any of the said general lighthouse authorities under this act shall be carried to the account of the Mercantile Marine Fund hereinafter mentioned, and shall be dealt with in manner hereinafter prescribed.

New Lighthouses.

Construction of and Dues for New Lighthouses.

Power to lighthouse authorities to erect, place and alter lighthouses, buoys and beacons.

404. Each of the said general lighthouse authorities shall have power, within its jurisdiction, to execute the following works and do the following things; (that is to say),

- (1.) To erect or place new lighthouses, with all requisite works, roads and appurtenances, or alter or remove any existing lighthouses:
- (2.) To erect or place any new buoys or beacons, or alter or remove any existing buoys or beacons:
- (3.) To take and purchase any land which may be necessary for the above purposes, or for the maintenance of the works or the residence of the light keepers:
- (4.) To vary the character of any lighthouse or the mode of exhibiting lights therein:
- (5.) To sell any land belonging to it:

But the exercise of the above power shall, in the case of the said commissioners and corporation, be subject to the restrictions hereinafter contained.

This power in the case of the commissioners and corporation to be subject to approval of Trinity House, with appeal to Board of Trade.

405. Previously to undertaking any such work as aforesaid, the said commissioners or corporation, as the case may be, shall forward a notice specifying fully the nature of the work proposed to be undertaken by them, and their reasons for undertaking the same, to the Trinity House, who shall take the proposed scheme into their consideration, and notify to the said commissioners or corporation their approval or rejection thereof with or without modifications; but no such notification shall be binding on the said commissioners or corporation until the same has been sanctioned by the Board of Trade in manner hereinafter mentioned; and at any time previous to such sanction being given, the said commissioners or corporation may forward to the Trinity House and the Board of Trade, or either of them, any objections to, or observations upon, or suggestions in respect of, such notification.

Sanction of Board of Trade, how to be obtained.

406. In order to obtain such sanction as aforesaid, the Trinity House shall forward a copy of their notification, accompanied by copies of all communications that have passed between the Trinity House and the said commissioners or corporation, to the Board of Trade; and such Board shall

have power to give any directions they may think fit in relation to the matters submitted to them, by granting or withholding their sanction, either wholly or partially, and either with or without modification.

407. The Trinity House shall forthwith communicate the directions given by the Board of Trade in relation to the matters aforesaid to the said commissioners or corporation, and the said commissioners or corporation shall, upon the receipt of such directions, be bound to act in conformity therewith, and to do or forbear doing anything thereby directed to be done or forborne.

Trinity House to inform lighthouse authorities of decision of Board of Trade.

408. The Trinity House shall have power to direct the said commissioners and corporation, or either of them, to execute the following works; (that is to say,)

Power to Trinity House, with sanction of Board of Trade, to compel execution of works by commissioners and corporation.

- (1.) To continue any existing lighthouses, buoys or beacons :
- (2.) To erect or place any new lighthouses, buoys or beacons, or alter or remove any existing lighthouses, buoys or beacons :
- (3.) To vary the character of any lighthouse, or the mode of exhibiting lights therein :

But no such directions shall be issued to the said commissioners or corporation until the issue thereof has been sanctioned by the Board of Trade ; such sanction to be obtained by the Trinity House in manner hereinafter mentioned.

409. Previously to issuing any such directions as aforesaid, the Trinity House shall make an application to the Board of Trade, stating fully the nature of the work to which such directions relate and their reasons for directing the same ; and shall at the same time give notice to the said commissioners or corporation respectively of such their application, by causing written notice of the said application and a copy of the proposed directions to be left at or sent to the office of the said commissioners in Edinburgh, or the office of the said corporation in Dublin, as the case may be ; and opportunity shall be afforded to the said commissioners or corporation to submit any observations they may see fit to make with respect to such application to the Trinity House and to the Board of Trade ; and if thereupon the said Trinity House adhere to their said directions, and if the Board of Trade concur therein, and if such adherence and concurrence is duly notified to the said commissioners or corporation, it shall be their duty within a reasonable time after such notification is made to carry the said directions into effect.

Sanction of Board of Trade, how to be obtained.

410. Upon the completion of any new lighthouse, buoy or beacon, her Majesty may by order in council fix such dues in respect thereof to be paid by the master or owner of every ship which passes the same or derives benefit therefrom as her Majesty may deem reasonable, and may from time to time alter the amount thereof ; and such dues shall be paid and collected in the same manner, by the same means, and subject to the same conditions in, by and subject to which the light dues authorized to be levied by this act are paid and collected.

Her Majesty may by order in council fix dues to be taken for new lighthouses.

411. No dues for any lighthouse, buoy or beacon to be erected or placed in or near the islands of Guernsey, Jersey, Sark or Alderney shall be taken in the said islands of Guernsey or Jersey without the consent of the states of the said islands respectively ; nor shall any powers hereinbefore given to the Trinity House in respect of any lighthouse, buoy or beacon erected or placed in the islands of Guernsey or Jersey, or hereafter to be erected or placed in such islands, be exercised without the consent of her Majesty in council.

No dues to be levied in the Channel Islands without consent of the States, and no power to be exercised therein but by order in council.

Incorporation of
5 & 6 Vict. cc. 18
and 19.

412. The Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Act (Scotland), 1845, shall be incorporated in this act, and shall apply to all lighthouses to be constructed and all land to be purchased under the powers thereof.

*Surrender of
Local Light-
houses.*

Local lighthouses
may be surren-
dered to general
lighthouse autho-
rities.

Surrender of Local Lighthouses.

413. Every local authority holding any lighthouse, buoy or beacon at any place within the jurisdiction of any of the said general lighthouse authorities may, if they think fit, surrender or sell the same to such general lighthouse authority, and such authority may, with the consent of the Board of Trade, accept or purchase the same, the purchase money (if any) to be paid out of the said Mercantile Marine Fund; and thereupon such lighthouse and its appurtenances or such buoy or beacon, as the case may be, shall become vested in such authority; and such authority shall be entitled to receive all dues lawfully payable in respect thereof at the time of such surrender or sale, or, if her Majesty by order in council so directs, such dues as might be fixed and made payable if the same were a new lighthouse, buoy or beacon; and such lighthouse, buoy or beacon, and the dues payable in respect thereof, shall, after such surrender or sale, be subject in all respects to the same regulations as other lighthouses and light dues, buoys and beacons provided for by this act.

*Damage to Lights,
Buoys and
Beacons.*

Penalty for in-
juring lights,
buoys and bea-
cons.

Damage to Lights, Buoys and Beacons.

414. If any person wilfully or negligently commits any of the following offences; (that is to say,)

- (1.) Injures any lighthouse or the lights exhibited therein, or any buoy or beacon:
- (2.) Removes, alters or destroys any light ship, buoy or beacon:
- (3.) Rides by, makes fast to, or runs foul of any light ship or buoy:

He shall, in addition to the expenses of making good any damage so occasioned, incur a penalty not exceeding fifty pounds.

*Prevention of
False Lights.*

General light-
house authorities
may prohibit
false lights.

Prevention of False Lights.

415. Whenever any fire or light is burned or exhibited at such place or in such manner as to be liable to be mistaken for a light proceeding from a lighthouse, it shall be lawful for the general lighthouse authority within whose jurisdiction such place is situate, to serve a notice upon the owner of the place where the fire or light is burnt or exhibited, or on the person having the charge of such fire or light, either personally or by delivery at the place of abode of such owner or person, or by affixing the same in some conspicuous spot near to such fire or light, and by such notice to direct such owner or person, within a reasonable time to be therein specified, to take effectual means for the extinguishing or effectually screening such existing light, and for preventing for the future any similar fire or light; and any owner or person disobeying such notice shall be deemed guilty of a common nuisance, and, in addition to any other penalties or liabilities of any kind thereby incurred, shall incur a penalty not exceeding one hundred pounds.

If not obeyed
they may abate
such lights.

416. If any owner or person served with such notice as aforesaid neglects for a period of seven days to extinguish or effectually screen the fire or light therein mentioned, it shall be lawful for the general lighthouse authority within whose jurisdiction the same may be, by their servants or workmen, to enter upon the place whereon the same may be, and forthwith to extinguish such fire or light, doing no unnecessary damage; and all expenses incurred by such authority in such extinction may be recovered

from such person or owner as aforesaid in the same way as penalties are hereby directed to be recoverable.

PART VII.

MERCANTILE MARINE FUND.

*Mercantile
Marine Fund.*

417. The following sums shall be carried to a common fund, to be entitled the "Mercantile Marine Fund;" (that is to say,)

Sums to be carried to Mercantile Marine Fund.

- (1.) All fees and other sums (other than fines and forfeitures) received by the Board of Trade under the provisions of the third and fourth parts of this act :
- (2.) All light dues or other sums received by or accruing to the Trinity House, the Commissioners of Northern Lighthouses, and the port of Dublin Corporation, under the sixth part of this act :
- (3.) All rates and monies received by the Trinity House under the local act of the seventh year of her present Majesty, chapter fifty-seven, for the regulation of lastage and ballastage in the river Thames : 7 Vict. c. 57.
- (4.) All fees and other sums mentioned in the table marked V. in the schedule hereto which are received by receivers appointed under the eighth part of this act :

And an account of the said fund intituled "The Mercantile Marine Fund Account," shall be kept with her Majesty's paymaster-general.

418. Subject to any prior charges that may be subsisting thereon by virtue of any act or acts of Parliament or otherwise, the said fund shall be chargeable with the following expenses ; (that is to say,)

Application of Mercantile Marine Fund.

- (1.) The salaries and other expenses connected with the local marine boards, the examinations, and the shipping offices, provided for by the third part of this act :
- (2.) The salaries of surveyors, and other expenses connected with the survey of passenger steam ships provided for by the fourth part of this act :
- (3.) All expenses incurred by the general lighthouse authorities aforesaid in the works and services of lighthouses, buoys and beacons provided for by the sixth part of this act, or in the execution of any works necessary or expedient for the purpose of permanently reducing the expense of such works and services :
- (4.) All expenses incurred by the Trinity House in respect of lastage and ballastage in the river Thames :
- (5.) Such expenses for establishing and maintaining on the coasts of the United Kingdom proper life-boats, with the necessary crews and equipments, and for affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea, and for rewarding the preservation of life in such cases, as the Board of Trade directs :
- (6.) Any expenses incurred in carrying into effect the provisions with regard to receivers and the performance of their duties contained in the eighth part of this act :
- (7.) Any expenses which by this or any other act of Parliament are specially charged thereon :

And shall, save as hereinafter mentioned, be applicable to no other purpose whatever.

419. The said rates and monies received by the Trinity House under the said local act of the seventh year of her present Majesty, chapter fifty-seven, shall, subject to the payment of such proportion of any prior charges subsisting on the Mercantile Marine Fund as may in the opinion of the Board of Trade be fairly chargeable thereon, and to the powers of raising money upon the credit of the said fund herein contained, be applicable only

Application of ballastage rates. 6 & 7 Vict. c. 57.

Incorporation of
8 & 9 Vict. cc. 18
and 19.

412. The Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Act (Scotland), 1845, shall be incorporated in this act, and shall apply to all lighthouses to be constructed and all land to be purchased under the powers thereof.

*Surrender of
Local Light-
houses.*

Local lighthouses
may be surren-
dered to general
lighthouse autho-
rities.

Surrender of Local Lighthouses.

413. Every local authority holding any lighthouse, buoy or beacon at any place within the jurisdiction of any of the said general lighthouse authorities may, if they think fit, surrender or sell the same to such general lighthouse authority, and such authority may, with the consent of the Board of Trade, accept or purchase the same, the purchase money (if any) to be paid out of the said Mercantile Marine Fund; and thereupon such lighthouse and its appurtenances or such buoy or beacon, as the case may be, shall become vested in such authority; and such authority shall be entitled to receive all dues lawfully payable in respect thereof at the time of such surrender or sale, or, if her Majesty by order in council so directs, such dues as might be fixed and made payable if the same were a new lighthouse, buoy or beacon; and such lighthouse, buoy or beacon, and the dues payable in respect thereof, shall, after such surrender or sale, be subject in all respects to the same regulations as other lighthouses and light dues, buoys and beacons provided for by this act.

*Damage to Lights,
Buoys and
Beacons.*

Penalty for in-
juring lights,
buoys and bea-
cons.

Damage to Lights, Buoys and Beacons.

414. If any person wilfully or negligently commits any of the following offences; (that is to say,)

- (1.) Injures any lighthouse or the lights exhibited therein, or any buoy or beacon:
- (2.) Removes, alters or destroys any light ship, buoy or beacon:
- (3.) Rides by, makes fast to, or runs foul of any light ship or buoy:

He shall, in addition to the expenses of making good any damage so occasioned, incur a penalty not exceeding fifty pounds.

*Prevention of
False Lights.*

General light-
house authorities
may prohibit
false lights.

Prevention of False Lights.

415. Whenever any fire or light is burned or exhibited at such place or in such manner as to be liable to be mistaken for a light proceeding from a lighthouse, it shall be lawful for the general lighthouse authority within whose jurisdiction such place is situate, to serve a notice upon the owner of the place where the fire or light is burnt or exhibited, or on the person having the charge of such fire or light, either personally or by delivery at the place of abode of such owner or person, or by affixing the same in some conspicuous spot near to such fire or light, and by such notice to direct such owner or person, within a reasonable time to be therein specified, to take effectual means for the extinguishing or effectually screening such existing light, and for preventing for the future any similar fire or light; and any owner or person disobeying such notice shall be deemed guilty of a common nuisance, and, in addition to any other penalties or liabilities of any kind thereby incurred, shall incur a penalty not exceeding one hundred pounds.

If not obeyed
they may abate
such lights.

416. If any owner or person served with such notice as aforesaid neglects for a period of seven days to extinguish or effectually screen the fire or light therein mentioned, it shall be lawful for the general lighthouse authority within whose jurisdiction the same may be, by their servants or workmen, to enter upon the place whereon the same may be, and forthwith to extinguish such fire or light, doing no unnecessary damage; and all expenses incurred by such authority in such extinction may be recovered

from such person or owner as aforesaid in the same way as penalties are hereby directed to be recoverable.

PART VII.

MERCANTILE MARINE FUND.

*Mercantile
Marine Fund.*

417. The following sums shall be carried to a common fund, to be entitled the "Mercantile Marine Fund;" (that is to say,)

Sums to be carried to Mercantile Marine Fund.

- (1.) All fees and other sums (other than fines and forfeitures) received by the Board of Trade under the provisions of the third and fourth parts of this act :
- (2.) All light dues or other sums received by or accruing to the Trinity House, the Commissioners of Northern Lighthouses, and the port of Dublin Corporation, under the sixth part of this act :
- (3.) All rates and monies received by the Trinity House under the local act of the seventh year of her present Majesty, chapter fifty-seven, for the regulation of lastage and ballastage in the river Thames : 7 Vict. c. 57.
- (4.) All fees and other sums mentioned in the table marked V. in the schedule hereto which are received by receivers appointed under the eighth part of this act :

And an account of the said fund intituled "The Mercantile Marine Fund Account," shall be kept with her Majesty's paymaster-general.

418. Subject to any prior charges that may be subsisting thereon by virtue of any act or acts of Parliament or otherwise, the said fund shall be chargeable with the following expenses ; (that is to say,)

Application of Mercantile Marine Fund.

- (1.) The salaries and other expenses connected with the local marine boards, the examinations, and the shipping offices, provided for by the third part of this act :
- (2.) The salaries of surveyors, and other expenses connected with the survey of passenger steam ships provided for by the fourth part of this act :
- (3.) All expenses incurred by the general lighthouse authorities aforesaid in the works and services of lighthouses, buoys and beacons provided for by the sixth part of this act, or in the execution of any works necessary or expedient for the purpose of permanently reducing the expense of such works and services :
- (4.) All expenses incurred by the Trinity House in respect of lastage and ballastage in the river Thames :
- (5.) Such expenses for establishing and maintaining on the coasts of the United Kingdom proper life-boats, with the necessary crews and equipments, and for affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea, and for rewarding the preservation of life in such cases, as the Board of Trade directs :
- (6.) Any expenses incurred in carrying into effect the provisions with regard to receivers and the performance of their duties contained in the eighth part of this act :
- (7.) Any expenses which by this or any other act of Parliament are specially charged thereon :

And shall, save as hereinafter mentioned, be applicable to no other purpose whatever.

419. The said rates and monies received by the Trinity House under the said local act of the seventh year of her present Majesty, chapter fifty-seven, shall, subject to the payment of such proportion of any prior charges subsisting on the Mercantile Marine Fund as may in the opinion of the Board of Trade be fairly chargeable thereon, and to the powers of raising money upon the credit of the said fund herein contained, be applicable only

Application of ballastage rates.
6 & 7 Vict. c. 57.

to services performed for the purpose of supplying ballast to or providing for the safety or convenience of such ships as navigate the said river Thames and the seas and channels leading thereto between Orfordness on the north and Dungeness on the south: Provided that if, in addition to the duties performed in consideration of the said ballastage rates under the said local act, the Trinity House, at the request or with the consent of the owners or masters of or agents for any ships, undertake to place ballast on board thereof, or to unload ballast therefrom, they shall be entitled to charge for such additional duties such reasonable additional rate per ton for ballast so placed on board or unladen as her Majesty by order in council from time to time approves.

Establishments for lighthouses and ballastage charged on fund to be fixed by her Majesty in council.

420. Her Majesty may from time to time, by and with the advice of her privy council, fix the establishments to be maintained by each of the said general lighthouse authorities on account of the services of lighthouses, buoys and beacons, and also as regards the Trinity House, on account of the service of lastage and ballastage in the river Thames, or the annual or other sums to be paid out of the said fund, in respect of such establishments; and if it appears that any part of the establishments of the said lighthouse authorities is maintained for the purposes of such duties and also for other purposes, to fix and from time to time alter the portion of the expense of such establishments to be paid out of the said fund; and no increase of any establishment or part of an establishment so fixed shall be made without the consent of the Board of Trade.

Power to grant superannuation allowances.

421. The said general lighthouse authorities may from time to time, with the sanction of the Board of Trade, grant superannuations or compensations to persons whose salaries are payable out of the said fund, and who are discharged or retire; so nevertheless that no superannuation allowance or compensation to any person so discharged or retiring shall exceed the proportion of his salary which might be granted to a person in the public civil service, under the act of the fourth and fifth years of King William the Fourth, chapter twenty-four, or under any other act for regulating such superannuation allowances or compensations for the time being in force.

Estimates and accounts for other expenses to be approved by the Board of Trade.

422. Each of the said general lighthouse authorities shall from time to time submit to the Board of Trade estimates of all expenses to be incurred by them in respect of the matters aforesaid, other than the establishment expenses for the time being allowed by order in council as aforesaid; and shall also, whenever in providing for any sudden emergency it is necessary to incur any expense without waiting until an estimate can be sanctioned, as soon as possible send to the Board of Trade a full account of such expense; and the Board of Trade shall consider and may approve such estimates and accounts, either with or without modification.

No expense to be allowed unless sanctioned by Board of Trade.

423. No expense of any of the said general lighthouse authorities in respect of the said services shall be paid out of the Mercantile Marine Fund, or allowed in account, other than the sums so allowed for establishment expenses as aforesaid, or included in estimates or accounts approved by the Board of Trade.

For the purpose of erecting and repairing lighthouses, and other extraordinary expenses, Treasury may advance money.

424. For the purpose of the construction and repair of lighthouses, and of other extraordinary expenses connected with the said services, the Treasury are authorized from time to time, upon the application of the Board of Trade, to advance out of the growing produce of the Consolidated Fund of the United Kingdom such sums of money, upon such terms and at such rate of interest as they think fit, and to pay the same into the Mercantile Marine Fund account, so nevertheless that the whole sum for the time being due in respect of such advances shall never at any one time exceed two hundred thousand pounds; and upon any advance being so

made the sum so advanced and the interest shall be a charge on the Mercantile Marine Fund, and upon the dues, rates, fees and payments so to be carried thereto as aforesaid; and the Board of Trade shall make such provision for the repayment thereof out of the said fund, either by forming a sinking fund or otherwise, as the Treasury may require; provided that no such advance shall prevent any lawful reduction of any of the said dues, rates, fees or payments, if such reduction be assented to by the Treasury.

425. The Board of Trade may also, for the purpose last aforesaid, raise money by mortgaging the Mercantile Marine Fund, and the several dues, rates, fees and payments so to be carried thereto as aforesaid, or any of them, or any part thereof, to any person or body of persons; and every such mortgage shall be in such form, and under the hand and seal of such person or persons, as the president of the said Board for the time being may direct; and no person or body of persons lending money upon any such mortgage shall be bound to see to the purpose for which the same is raised, or to the mode in which it is applied.

Power to Board of Trade to borrow money on the credit of fund.

426. The Public Works Loan Commissioners may also, for the purpose last aforesaid, advance money upon mortgage of the said Mercantile Marine Fund, and the several dues, rates, fees and payments so to be carried thereto as aforesaid, or any of them, or any part thereof, without requiring any further security than such mortgage as aforesaid; but every mortgage so made to the said Public Works Loan Commissioners, or their secretary for the time being, shall be made under and in pursuance of the acts of Parliament regulating the proceedings of the said Public Works Loan Commissioners, anything herein contained to the contrary notwithstanding: provided, that no advance which may be made by the said Public Works Loan Commissioners shall prevent any lawful reduction of any of the said dues, rates, fees or payments, if such reduction is assented to by the said Public Works Loan Commissioners.

Power to Public Works Loan Commissioners to advance money on the credit of the fund.

427. Each of the said general lighthouse authorities shall account to the Board of Trade for their receipts from the said light dues and ballastage rates, and for their expenditure as regards expenses paid out of the said fund, in such form, and at such times, and with such details, explanations and vouchers, as the Board of Trade requires, and shall, when required by such Board, permit all books of accounts kept by or under their respective direction to be inspected and examined by such persons as the said Board appoints for that purpose.

Lighthouse authorities to account for receipt and expenditure to Board of Trade.

428. The Board of Trade shall render to the commissioners for auditing the public accounts periodical accounts of the whole of the receipts and expenditure of the Mercantile Marine Fund, such accounts to be signed and declared to by the accountant appointed by the Board of Trade for that purpose; and in case of default it shall be lawful for the Treasury to make or direct such allowance as under the circumstances of the case they may think fit in respect thereof.

Accounts of fund to be audited by commissioners of audit.

429. The Board of Trade shall as soon as practicable after the meeting of Parliament in every year cause the account of the Mercantile Marine Fund for the then preceding year to be laid before both Houses of Parliament.

Accounts to be laid before Parliament.

430. All lighthouses, buoys, beacons and light dues, and all other rates, fees or payments accruing to or forming part of the said fund, and all premises or property belonging to or occupied by any of the said general lighthouse authorities or the Board of Trade, which are used or applied for the purposes of any of the services for which such dues, rates, fees and

Property used for the purposes of Parts III. and VI. of Act to be exempt from all rates and taxes.

payments are received, and all instruments or writings used by or under the direction of any of the said general lighthouse authorities or the Board of Trade in carrying on the said services, shall be exempted from all public, parochial and local taxes, duties and rates of every kind.

Ships of lighthouse authorities exempt from harbour dues.

431. The ships belonging to or used by any of the said general lighthouse authorities, or by the Board of Trade, shall be privileged to enter, resort to and use any harbours, ports, docks or piers in the United Kingdom, without payment of any tolls, dues or rates of any kind.

PART VIII.

WRECKS, CASUALTIES AND SALVAGE.

Inquiries into Wrecks.

Inquiries to be instituted in cases of wreck and casualty.

Inquiries into Wrecks.

432. In any of the cases following, (that is to say,)

Whenever any ship is lost, abandoned or materially damaged on or near the coasts of the United Kingdom ;

Whenever any ship causes loss or material damage to any other ship on or near such coasts ;

Whenever by reason of any casualty happening to or on board of any ship on or near such coasts loss of life ensues ;

Whenever any such loss, abandonment, damage or casualty happens elsewhere, and any competent witnesses thereof arrive or are found at any place in the United Kingdom :

It shall be lawful for the inspecting officer of the coast guard or the principal officer of customs residing at or near the place where such loss, abandonment, damage or casualty occurred, if the same occurred on or near the coasts of the United Kingdom, but if elsewhere at or near the place where such witnesses as aforesaid arrive or are found or can be conveniently examined, or for any other person appointed for the purpose by the Board of Trade, to make inquiry respecting such loss, abandonment, damage or casualty ; and he shall for that purpose have all the powers given by the first part of this act to inspectors appointed by the said Board.

Formal investigation before justices.

433. If it appears to such officer or person as aforesaid, either upon or without any such preliminary inquiry as aforesaid, that a formal investigation is requisite or expedient, or if the Board of Trade so directs, he shall apply to any two justices or to a stipendiary magistrate to hear the case ; and such justices or magistrate shall thereupon proceed to hear and try the same, and shall for that purpose, so far as relates to the summoning of parties, compelling the attendance of witnesses, and the regulation of the proceedings, have the same powers as if the same were a proceeding relating to an offence or cause of complaint upon which they or he have power to make a summary conviction or order, or as near thereto as circumstances permit ; and it shall be the duty of such officer or person as aforesaid to superintend the management of the case, and to render such assistance to the said justices or magistrate as is in his power ; and, upon the conclusion of the case, the said justices or magistrate shall send a report to the Board of Trade, containing a full statement of the case and of their or his opinion thereon, accompanied by such report of or extracts from the evidence, and such observations (if any) as they or he may think fit.

Power to appoint nautical assessor.

434. In cases where nautical skill and knowledge are required, the Board of Trade shall have the power, either at the request of such justices or magistrate, or at its own discretion, to appoint some person of nautical skill and knowledge to act as assessor to such justices or magistrate ; and such assessor shall, upon the conclusion of the case, either signify his con-

currence in their report by signing the same, or if he dissents therefrom shall signify such dissent and his reasons therefor to the Board of Trade.

435. In places where there is a local marine board, and where a stipendiary magistrate is a member of such board, all such investigations as aforesaid shall, whenever he happens to be present, be made before such magistrate; and there shall be paid to such magistrate in respect of his services under this act such remuneration, whether by way of annual increase of salary or otherwise, as her Majesty's Secretary of State for the Home Department, with the consent of the Board of Trade, may direct; and such remuneration shall be paid out of the Mercantile Marine Fund.

Stipendiary magistrate to be the magistrate who is member of Local Marine Board, and to be paid.

436. The said justices or magistrate may make such order with respect to the costs of any such investigation or any portion thereof as they or he may deem just, and such costs shall be paid accordingly, and shall be recoverable in the same manner as other costs incurred in summary proceedings before them or him; and the Board of Trade may, if in any case it thinks fit so to do, pay the expense of any such investigation, and may pay to such assessor as aforesaid such remuneration as it thinks fit.

Costs of such investigations.

437. In the case of any such investigation as aforesaid to be held in Scotland, the Board of Trade may, if it so thinks fit, remit the same to the Lord Advocate to be prosecuted in such manner as he may direct, and, in case he so requires, with the assistance of such person of nautical skill and knowledge as the Board of Trade may appoint for the purpose.

Investigations in Scotland.

438. Such justices or magistrate as aforesaid may, or in Scotland such person or persons, as is or are directed by the Lord Advocate to conduct the investigation may, if they or he think fit, require any master or mate possessing a certificate of competency or service whose conduct is called in question, or appears to them or him likely to be called in question in the course of such investigation, to deliver such certificate to them or him, and they or he shall hold the certificate so delivered until the conclusion of the investigation, and shall then either return the same to such master or mate, or, if their report is such as to enable the Board of Trade to cancel or suspend such certificate under the powers given to such Board by the third part of this act, shall forward the same to the Board of Trade, to be dealt with as such Board thinks fit; and if any master or mate fails so to deliver his certificate when so required, he shall incur a penalty not exceeding fifty pounds.

Master or mate may be required to deliver certificate to be held until close of inquiry.

Appointment and Duties of Receivers.

439. The Board of Trade shall throughout the United Kingdom have the general superintendence of all matters relating to wreck; and it may, with the consent of the Commissioners of her Majesty's Treasury, appoint any officer of customs or of the coast guard, or any officer of inland revenue, or, when it appears to such Board to be more convenient, any other person, to be a receiver of wreck in any district, and to perform such duties as are hereinafter mentioned, and shall give due notice of every such appointment.

Appointment and Duties of Receivers.

Board of Trade superintendents of wreck, with power to appoint receivers.

440. No admiral, vice-admiral or other person, under whatever denomination, exercising Admiralty jurisdiction, shall as such, by himself or his agents, receive, take or interfere with any wreck except as hereinafter mentioned.

Admiral not to interfere with wreck.

441. Whenever any ship or boat is stranded or in distress at any place on the shore of the sea or of any tidal water within the limits of the United Kingdom, the receiver of the district within which such place is situate

Duty of receiver when any ship is stranded or in distress.

shall, upon being made acquainted with such accident, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions, as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding fifty pounds; but it shall not be lawful for such receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master.

Powers of receiver in case of such accident to any ship or boat.

442. The receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo and apparel, do the following things; (that is to say.)

- (1.) Summon such number of men as he thinks necessary to assist him:
- (2.) Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship or boats as may be in his power:
- (3.) Demand the use of any waggon, cart or horses that may be near at hand:

And any person refusing without reasonable cause to comply with any summons, requisition or demand so made as aforesaid, shall for every such refusal incur a penalty not exceeding one hundred pounds; but no person shall be liable to pay any duty of assessed taxes in respect of any such waggon, cart or horses by reason of the user of the same under this section.

All articles washed on shore, or lost, or taken from any ship or boat, to be delivered to the receiver.

443. All cargo and other articles belonging to such ship or boat as aforesaid that may be washed on shore, or otherwise be lost or taken from such ship or boat, shall be delivered to the receiver; and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the receiver or to any person authorized by him to demand the same, shall incur a penalty not exceeding one hundred pounds; and it shall be lawful for such receiver or other person as aforesaid to take such cargo or article by force from the person so refusing to deliver the same.

Power of receiver to suppress plunder and disorder by force.

444. Whenever any such accident as aforesaid occurs to any ship or boat, and any person plunders, creates disorder or obstructs the preservation of such ship, boat, lives or cargo as aforesaid, it shall be lawful for the receiver to cause such person to be apprehended, and to use force for the suppression of any such plundering, disorder or obstruction as aforesaid, with power to command all her Majesty's subjects to assist him in the use of such force; and if any person is killed, maimed or hurt by reason of his resisting the receiver in the execution of the duties hereby committed to him, or any person acting under his orders, such receiver or other person shall be free and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed or hurt.

Certain officers to exercise powers of receiver in his absence.

445. During the absence of the receiver from the place where any such accident as aforesaid occurs, or in places where no receiver has been appointed under this act, the following officers in succession, each in the absence of the other, in the order in which they are named, that is to say, any principal officer of customs or of the coast guard, or officer of inland revenue, and also any sheriff, justice of the peace, commissioned officer on full pay in the naval service of her Majesty, or commissioned officer on full pay in the military service of her Majesty, may do all matters and things hereby authorized to be done by the receiver, with this exception, that with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the receiver is hereinbefore required, any officer so acting shall be considered as the agent of the receiver, and shall place

the same in the custody of the receiver; and no person so acting as substitute for any receiver shall be entitled to any fees payable to receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

446. Whenever any such accident as aforesaid occurs to any ship or boat, all persons may, for the purpose of rendering assistance to such ship or boat, or saving the lives of the persons on board the same, or the cargo or apparel thereof, unless there is some public road equally convenient, pass and repass either with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat; and all damage that may be sustained by any owner or occupier in consequence of any such passing or repassing or deposit as aforesaid shall be a charge on the ship, boat, cargo or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recoverable in the same manner as salvage is hereby made recoverable; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

Power in case of a ship being in distress to pass over adjoining lands with carriages.

447. If the owner or occupier of any land over which any person is hereby authorized to pass or repass for any of the purposes hereinbefore mentioned does any of the following things; (that is to say,)

- (1.) Impedes or hinders any such person from so passing or repassing, with or without carriages, horses and servants, by locking his gates, refusing, upon request, to open the same, or otherwise however:
- (2.) Impedes or hinders the deposit of any cargo or other article recovered from any such ship or boat, as hereinbefore mentioned:
- (3.) Prevents such cargo or other article from remaining so deposited for a reasonable time, until the same can be removed to a safe place of public deposit:

Penalty on owners and occupiers of land refusing to allow carriages, &c. to pass over their land.

He shall for every such offence incur a penalty not exceeding one hundred pounds.

448. Any receiver, or in his absence any justice of the peace, shall, as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship which may be or may have been in distress on the coasts of the United Kingdom, or any other person who may be able to give any account thereof or of the cargo or stores thereof, as to the following matters; (that is to say,)

Power of receiver to institute examination with respect to ships in distress.

- (1.) The name and description of the ship:
- (2.) The name of the master and of the owners:
- (3.) The names of the owners of the cargo:
- (4.) The ports or places from and to which the ship was bound:
- (5.) The occasion of the distress of the ship:
- (6.) The services rendered:
- (7.) Such other matters or circumstances relating to such ship, or to the cargo on board the same, as the receiver or justice thinks necessary:

And such receiver or justice shall take the examination down in writing, and shall make two copies of the same, of which he shall send one to the Board of Trade, and the other to the secretary of the committee for managing the affairs of Lloyd's in London, and such last-mentioned copy shall be placed by the said secretary in some conspicuous situation for the inspection of persons desirous of examining the same; and for the purposes of such examination every such receiver or justice as aforesaid shall have all the powers given by the first part of this act to inspectors appointed by the Board of Trade.

shall, upon being made acquainted with such accident, forthwith proceed to such place, and upon his arrival there he shall take the command of all persons present, and assign such duties to each person, and issue such directions, as he may think fit with a view to the preservation of such ship or boat, and the lives of the persons belonging thereto, and the cargo and apparel thereof; and if any person wilfully disobeys such directions, he shall forfeit a sum not exceeding fifty pounds; but it shall not be lawful for such receiver to interfere between the master of such ship or boat and his crew in matters relating to the management thereof, unless he is requested so to do by such master.

Powers of receiver in case of such accident to any ship or boat.

442. The receiver may, with a view to such preservation as aforesaid of the ship or boat, persons, cargo and apparel, do the following things; (that is to say.)

- (1.) Summon such number of men as he thinks necessary to assist him:
- (2.) Require the master or other person having the charge of any ship or boat near at hand to give such aid with his men, ship or boats as may be in his power:
- (3.) Demand the use of any waggon, cart or horses that may be near at hand:

And any person refusing without reasonable cause to comply with any summons, requisition or demand so made as aforesaid, shall for every such refusal incur a penalty not exceeding one hundred pounds; but no person shall be liable to pay any duty of assessed taxes in respect of any such waggon, cart or horses by reason of the user of the same under this section.

All articles washed on shore, or lost, or taken from any ship or boat, to be delivered to the receiver.

443. All cargo and other articles belonging to such ship or boat as aforesaid that may be washed on shore, or otherwise be lost or taken from such ship or boat, shall be delivered to the receiver; and any person, whether he is the owner or not, who secretes or keeps possession of any such cargo or article, or refuses to deliver the same to the receiver or to any person authorized by him to demand the same, shall incur a penalty not exceeding one hundred pounds; and it shall be lawful for such receiver or other person as aforesaid to take such cargo or article by force from the person so refusing to deliver the same.

Power of receiver to suppress plunder and disorder by force.

444. Whenever any such accident as aforesaid occurs to any ship or boat, and any person plunders, creates disorder or obstructs the preservation of such ship, boat, lives or cargo as aforesaid, it shall be lawful for the receiver to cause such person to be apprehended, and to use force for the suppression of any such plundering, disorder or obstruction as aforesaid, with power to command all her Majesty's subjects to assist him in the use of such force; and if any person is killed, maimed or hurt by reason of his resisting the receiver in the execution of the duties hereby committed to him, or any person acting under his orders, such receiver or other person shall be free and fully indemnified as well against the Queen's Majesty, her heirs and successors, as against all persons so killed, maimed or hurt.

Certain officers to exercise powers of receiver in his absence.

445. During the absence of the receiver from the place where any such accident as aforesaid occurs, or in places where no receiver has been appointed under this act, the following officers in succession, each in the absence of the other, in the order in which they are named, that is to say, any principal officer of customs or of the coast guard, or officer of inland revenue, and also any sheriff, justice of the peace, commissioned officer on full pay in the naval service of her Majesty, or commissioned officer on full pay in the military service of her Majesty, may do all matters and things hereby authorized to be done by the receiver, with this exception, that with respect to any goods or articles belonging to any such ship or boat, the delivery up of which to the receiver is hereinbefore required, any officer so acting shall be considered as the agent of the receiver, and shall place

the same in the custody of the receiver; and no person so acting as substitute for any receiver shall be entitled to any fees payable to receivers, or be deprived by reason of his so acting of any right to salvage to which he would otherwise be entitled.

446. Whenever any such accident as aforesaid occurs to any ship or boat, all persons may, for the purpose of rendering assistance to such ship or boat, or saving the lives of the persons on board the same, or the cargo or apparel thereof, unless there is some public road equally convenient, pass and repass either with or without carriages or horses over any adjoining lands, without being subject to interruption by the owner or occupier, so that they do as little damage as possible, and may also, on the like condition, deposit on such lands any cargo or other article recovered from such ship or boat; and all damage that may be sustained by any owner or occupier in consequence of any such passing or repassing or deposit as aforesaid shall be a charge on the ship, boat, cargo or articles in respect of or by which such damage was occasioned, and shall, in default of payment, be recoverable in the same manner as salvage is hereby made recoverable; and the amount payable in respect thereof, if disputed, shall be determined in the same manner as the amount of salvage is hereby in case of dispute directed to be determined.

Power in case of a ship being in distress to pass over adjoining lands with carriages.

447. If the owner or occupier of any land over which any person is hereby authorized to pass or repass for any of the purposes hereinbefore mentioned does any of the following things; (that is to say,)

- (1.) Impedes or hinders any such person from so passing or repassing, with or without carriages, horses and servants, by locking his gates, refusing, upon request, to open the same, or otherwise however:
- (2.) Impedes or hinders the deposit of any cargo or other article recovered from any such ship or boat, as hereinbefore mentioned:
- (3.) Prevents such cargo or other article from remaining so deposited for a reasonable time, until the same can be removed to a safe place of public deposit:

Penalty on owners and occupiers of land refusing to allow carriages, &c. to pass over their land.

He shall for every such offence incur a penalty not exceeding one hundred pounds.

448. Any receiver, or in his absence any justice of the peace, shall, as soon as conveniently may be, examine upon oath (which oath they are hereby respectively empowered to administer) any person belonging to any ship which may be or may have been in distress on the coasts of the United Kingdom, or any other person who may be able to give any account thereof or of the cargo or stores thereof, as to the following matters; (that is to say,)

- (1.) The name and description of the ship:
- (2.) The name of the master and of the owners:
- (3.) The names of the owners of the cargo:
- (4.) The ports or places from and to which the ship was bound:
- (5.) The occasion of the distress of the ship:
- (6.) The services rendered:
- (7.) Such other matters or circumstances relating to such ship, or to the cargo on board the same, as the receiver or justice thinks necessary:

Power of receiver to institute examination with respect to ships in distress.

And such receiver or justice shall take the examination down in writing, and shall make two copies of the same, of which he shall send one to the Board of Trade, and the other to the secretary of the committee for managing the affairs of Lloyd's in London, and such last-mentioned copy shall be placed by the said secretary in some conspicuous situation for the inspection of persons desirous of examining the same; and for the purposes of such examination every such receiver or justice as aforesaid shall have all the powers given by the first part of this act to inspectors appointed by the Board of Trade.

Original or certified copy of examination to be *prima facie* evidence.

449. Any examination so taken in writing as aforesaid, or a copy thereof, purporting to be certified under the hand of the receiver, or justice before whom such examination was taken, shall be admitted in evidence in any Court of justice, or before any person having by law or by consent of parties authority to hear, receive and examine evidence, as *prima facie* proof of all matters contained in such written examination.

Rules to be observed by persons finding wreck.

450. The following rules shall be observed by any person finding or taking possession of wreck within the United Kingdom; (that is to say,)

- (1.) If the person so finding or taking possession of the same is the owner, he shall as soon as possible give notice to the receiver of the district within which such wreck is found, stating that he has so found or taken possession of the same; and he shall describe in such notice the marks by which such wreck is distinguished:
- (2.) If any person not being the owner finds or takes possession of any wreck, he shall as soon as possible deliver the same to such receiver as aforesaid:

And any person making default in obeying the provisions of this section shall incur the following penalties; (that is to say,)

- (3.) If he is the owner and makes default in performing the several things, the performance of which is hereby imposed on an owner, He shall incur a penalty not exceeding one hundred pounds:
- (4.) If he is not the owner and makes default in performing the several things, the performance of which is hereby imposed on any person not being an owner,

He shall forfeit all claim to salvage:

He shall pay to the owner of such wreck, if the same is claimed, but if the same is unclaimed then to the person entitled to such unclaimed wreck, double the value of such wreck (such value to be recovered in the same way as a penalty of like amount): and

He shall incur a penalty not exceeding one hundred pounds.

Power for receivers to seize concealed wreck.

451. If any receiver suspects or receives information that any wreck is secreted, or in the possession of some person who is not the owner thereof, or otherwise improperly dealt with, he may apply to any justice of the peace for a warrant, and such justice shall have power to grant a warrant, by virtue whereof it shall be lawful for the receiver to enter into any house or other place wherever situate, and also into any ship or boat, and to search for, and to seize and detain any such wreck as aforesaid there found; and if any such seizure is made in consequence of information that may have been given by any person to the receiver, the informer shall be entitled by way of salvage to such sum not exceeding in any case five pounds as the receiver may allow.

Notice of wreck to be given by receiver.

452. Every receiver shall within forty-eight hours after taking possession of any wreck cause to be posted up in the custom house of the port nearest to the place where such wreck was found or seized a description of the same and of any marks by which it is distinguished, and shall also, if the value of such wreck exceeds twenty pounds, but not otherwise, transmit a similar description to the secretary of the committee of Lloyd's aforesaid; and such secretary shall post up the description so sent, or a copy thereof, in some conspicuous place, for the inspection of all persons desirous of examining the same.

Goods deemed perishable or of small value may be sold immediately.

453. In cases where any wreck in the custody of any receiver is under the value of five pounds, or is of so perishable a nature or so much damaged that the same cannot, in his opinion, be advantageously kept, or if the value thereof is not sufficient to defray the charge of warehousing, the receiver may sell the same before the expiration of the period herein-

after mentioned, and the money raised by such sale, after defraying the expenses thereof, shall be held by the receiver for the same purposes and subject to the same claims for and to which the article sold would have been held and liable if it had remained unsold.

454. In cases where any admiral, vice-admiral, lord of the manor or other person is entitled for his own use to unclaimed wreck found on any place situate within a district for which a receiver is appointed, such admiral, vice-admiral, lord of the manor or other person shall deliver to such receiver a statement containing the particulars of his title, and the address to which notices are to be sent; and upon such statement being so delivered, and proof made to the satisfaction of the receiver of the validity of such title, it shall be his duty, whenever he takes possession of any wreck found at any such place, to send within forty-eight hours thereafter a description of the same and of any marks by which it is distinguished, directed to such address as aforesaid.

In cases where any lord of the manor or other person is entitled to unclaimed wreck, receiver to give notice to him.

455. There shall be paid to all receivers appointed under this act the expenses properly incurred by them in the performance of their duties, and also in respect of the several matters specified in the table marked V. in the schedule hereto, such fees, not exceeding the amounts therein mentioned, as may from time to time be directed by the Board of Trade; and the receiver shall have the same lien and be entitled to the same remedies for the recovery of such expenses and fees as a salvor has or is entitled to in respect of salvage due to him; but, save as aforesaid, no receiver appointed under this act shall, as such, be entitled to any remuneration whatsoever.

Payments to be made to receiver.

456. Whenever any dispute arises in any part of the United Kingdom as to the amount payable to any receiver in respect of expenses or fees, such dispute shall be determined by the Board of Trade, whose decision shall be final.

Disputes as to sums payable to receiver to be determined by Board of Trade.

457. All fees received by any receiver appointed under this act, in respect of any services performed by him as receiver, shall be carried to and form part of the Mercantile Marine Fund, and a separate account thereof shall be kept, and the monies arising therefrom shall be applied in defraying any expenses duly incurred in carrying into effect the purposes of the eighth part of this act, in such manner as the Board of Trade directs.

Application of fees.

Salvage in the United Kingdom.

458. In the following cases, (that is to say,) Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water situate within the limits of the United Kingdom, and services are rendered by any person,

Salvage in the United Kingdom.

Salvage in respect of services rendered in the United Kingdom.

- (1.) In assisting such ship or boat:
- (2.) In saving the lives of the persons belonging to such ship or boat:
- (3.) In saving the cargo or apparel of such ship or boat, or any portion thereof:

And whenever any wreck is saved by any person other than a receiver within the United Kingdom:

There shall be payable by the owners of such ship or boat, cargo, apparel or wreck, to the person by whom such services or any of them are rendered or by whom such wreck is saved, a reasonable amount of salvage, together with all expenses properly incurred by him in the performance of such services or the saving of such wreck, the amount of such salvage and expenses (which expenses are hereinafter included under the term salvage) to be determined in case of dispute in manner hereinafter mentioned.

Salvage for life may be paid by Board of Trade out of Mercantile Marine Fund.

459. Salvage in respect of the preservation of the life or lives of any person or persons belonging to any such ship or boat as aforesaid shall be payable by the owners of the ship or boat in priority to all other claims for salvage; and in cases where such ship or boat is destroyed, or where the value thereof is insufficient, after payment of the actual expenses incurred, to pay the amount of salvage due in respect of any life or lives, the Board of Trade may in its discretion award to the salvors of such life or lives out of the Mercantile Marine Fund such sum or sums as it deems fit, in whole or part satisfaction of any amount of salvage so left unpaid in respect of such life or lives.

Disputes as to salvage, how to be settled.

460. Disputes with respect to salvage arising within the boundaries of the Cinque Ports shall be determined in the manner in which the same have hitherto been determined; but whenever any dispute arises elsewhere in the United Kingdom between the owners of any such ship, boat, cargo, apparel or wreck as aforesaid, and the salvors, as to the amount of salvage, and the parties to the dispute cannot agree as to the settlement thereof by arbitration or otherwise,

Then, if the sum claimed does not exceed two hundred pounds,

Such dispute shall be referred to the arbitration of any two justices of the peace resident as follows; (that is to say,)

In case of wreck, resident at or near the place where such wreck is found:

In case of services rendered to any ship or boat, or to the persons, cargo or apparel belonging thereto, resident at or near the place where such ship or boat is lying, or at or near the first port or place in the United Kingdom into which such ship or boat is brought after the occurrence of the accident by reason whereof the claim to salvage arises:

But if the sum claimed exceeds two hundred pounds,

Such dispute may, with the consent of the parties, be referred to the arbitration of such justices as aforesaid, but if they do not consent shall in England be decided by the High Court of Admiralty of England, in Ireland by the High Court of Admiralty of Ireland, and in Scotland by the Court of Session; subject to this proviso, that if the claimants in such dispute do not recover in such Court of Admiralty or Court of Session a greater sum than two hundred pounds, they shall not, unless the Court certifies that the case is a fit one to be tried in a superior Court, recover any costs, charges or expenses incurred by them in the prosecution of their claim:

And every dispute with respect to salvage may be heard and adjudicated upon on the application either of the salvor or of the owner of the property salvaged, or of their respective agents.

Manner in which justices may decide disputes.

461. Whenever in pursuance of this act any dispute as to salvage is referred to the arbitration of two justices, they may either themselves determine the same, with power to call to their assistance any person conversant with maritime affairs as assessor, or they may if a difference of opinion arises between them, or without such difference, if they think fit, appoint some person conversant with maritime affairs as umpire to decide the point in dispute; and such justices or their umpire shall make an award as to the amount of salvage payable, within the following times, that is to say, the said justices within forty-eight hours after such dispute has been referred to them, and the said umpire within forty-eight hours after his appointment, with power nevertheless for such justices or umpire by writing under their or his hands or hand to extend the time within which they and he are hereby respectively directed to make their or his award.

Costs of arbitration.

462. There shall be paid to every assessor and umpire who may be so appointed as aforesaid in respect of his services such sum not exceeding

five pounds as the Board of Trade may from time to time direct; and all the costs of such arbitration, including any such payments as aforesaid, shall be paid by the parties to the dispute, in such manner and in such shares and proportions as the said justices or as the said umpire may direct by their or his award.

463. The said justices or their umpire may call for the production of any documents in the possession or power of either party, which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

Justices may call for documents, and administer oaths.

464. If any person is aggrieved by the award made by such justices or such umpire as aforesaid, he may in England appeal to the High Court of Admiralty of England, in Ireland to the High Court of Admiralty of Ireland, and in Scotland to the Court of Session; but no such appeal shall be allowed unless the sum in dispute exceeds fifty pounds, nor unless within ten days after the date of the award the appellant gives notice to the justices to whom the matter was referred of his intention to appeal, nor unless the appellant proceeds to take out a monition, or to take such other proceeding as according to the practice of the Court of Appeal is necessary for the institution of an appeal, within twenty days from the date of the award.

Appeal to Courts of Admiralty.

465. Whenever any appeal is made in manner hereinbefore provided the justices shall transmit to the proper officer of the Court of Appeal a copy on unstamped paper certified under their hands, to be a true copy of the proceedings had before such justices or their umpire, if any, and of the award so made by them or him, accompanied with their or his certificate in writing of the gross value of the article respecting which salvage is claimed; and such copy and certificate shall be admitted in the Court of Appeal as evidence in the cause.

Justices to transmit copy of proceedings and certificate of value to Court of Appeal.

466. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained either by agreement or by the award of such justices or their umpire, but a dispute arises as to the apportionment thereof amongst several claimants, then, if the amount does not exceed two hundred pounds, it shall be lawful for the party liable to pay the amount so due to apply to the receiver of the district for liberty to pay the amount so ascertained to him; and he shall, if he thinks fit, receive the same accordingly, and grant a certificate under his hand, stating the fact of such payment and the services in respect of which it is made; and such certificate shall be a full discharge and indemnity to the person or persons to whom it is given, and to their ship, boats, cargo, apparel and effects, against the claims of all persons whomsoever in respect of the services therein mentioned; but if the amount exceeds two hundred pounds, it shall be apportioned in manner hereinafter mentioned.

Payment of salvage, to whom to be made in case of dispute as to apportionment.

467. Upon the receipt of any such amount as aforesaid the receiver shall with all convenient speed proceed to distribute the same among the several persons entitled thereto, upon such evidence and in such shares and proportions as he thinks fit, with power to retain any monies that may appear to him to be payable to any absent parties; but any distribution made in pursuance of this section shall be final and conclusive against the rights of all persons claiming to be entitled to any portion of the monies so distributed.

Apportionment of salvage.

468. Whenever any salvage is due to any person under this act, the receiver shall act as follows; (that is to say,)

Manner of enforcing payment of salvage.

- (1.) If the same is due in respect of services rendered in assisting any ship or boat, or in saving the lives of persons belonging to the same, or the cargo or apparel thereof,

He shall detain such ship or boat and the cargo and apparel belonging thereto until payment is made, or process has been issued by some competent Court for the detention of such ship, boat, cargo or apparel :

- (2.) If the same is due in respect of the saving of any wreck, and such wreck is not sold as unclaimed in pursuance of the provisions herein-after contained,

He shall detain such wreck until payment is made, or process has been issued in manner aforesaid :

But it shall be lawful for the receiver, if at any time previously to the issue of such process security is given to his satisfaction for the amount of salvage due, to release from his custody any ship, boat, cargo, apparel or wreck so detained by him as aforesaid ; and in cases where the claim for salvage exceeds two hundred pounds it shall be lawful in England for the High Court of Admiralty of England, in Ireland for the High Court of Admiralty of Ireland, and in Scotland for the Court of Session, to determine any question that may arise concerning the amount of the security to be given or the sufficiency of the sureties ; and in all cases where bond or other security is given to the receiver for an amount exceeding two hundred pounds it shall be lawful for the salvor or for the owner of the property saved, or their respective agents, to institute proceedings in such last-mentioned Courts for the purpose of having the questions arising between them adjudicated upon, and the said Courts may enforce payment of the said bond or other security, in the same manner as if bail had been given in the said Courts.

Power of receiver to sell property saved in cases of nonpayment.

469. Whenever any ship, boat, cargo, apparel or wreck is detained by any receiver for nonpayment of any sums so due as aforesaid, and the parties liable to pay the same are aware of such detention, then, in the following cases ; (that is to say,) .

- (1.) In cases where the amount is not disputed, and payment thereof is not made within twenty days after the same has become due :
- (2.) In cases where the amount is disputed, but no appeal lies from the first tribunal to which the dispute is referred, and payment thereof is not made within twenty days after the decision of such first tribunal :
- (3.) In cases where the amount is disputed, and an appeal lies from the decision of the first tribunal to some other tribunal, and payment thereof is not made within such twenty days as last aforesaid, or such motion as hereinbefore mentioned is not taken out within such twenty days, or such other proceedings as are according to the practice of such other tribunal necessary for the prosecution of an appeal are not instituted within such twenty days :

The receiver may forthwith sell such ship, boat, cargo, apparel or wreck, or a sufficient part thereof, and out of the proceeds of the sale, after payment of all expenses thereof, defray all sums of money due in respect of expenses, fees and salvage, paying the surplus, if any, to the owners of the property sold, or other the parties entitled to receive the same.

Subject to payment of expenses, fees and salvage, owner entitled to wreck.

470. Subject to the payment of such expenses, fees and salvage as aforesaid, the owner of any wreck who establishes his claim thereto to the satisfaction of the receiver within one year from the date at which such wreck has come into the possession of the receiver, shall be entitled to have the same delivered up to him.

Unclaimed Wreck in the United Kingdom.

Unclaimed Wreck in the United Kingdom.

Receiver to deliver up posses-

471. In the event of no owner establishing a claim to wreck found in any place in the United Kingdom before the expiration of a year from the

date at which the same has come into the possession of the receiver, then, if any such admiral, vice-admiral, lord of any manor or other person as aforesaid has given notice to and has proved to the satisfaction of the receiver that he is entitled to wreck found at such place, the receiver shall, upon payment of all expenses, fees and salvage due in respect of such wreck, deliver up possession thereof to such admiral, vice-admiral, lord of the manor or other person; and in case of dispute as to the amount of the sums so payable, and also in case of default being made in payment thereof, such dispute shall be determined and payment enforced in the manner in which such amount and payment is hereby directed to be determined and enforced in cases where any owner establishes his claim to wreck.

tion of unclaimed wreck to lord of manor or other person entitled.

472. If any dispute arises between the receiver and any such admiral, vice-admiral, lord of any manor or other person as aforesaid as to the validity of his title to wreck, or if divers persons claim to be entitled to wreck found at the same place, the matter in dispute may be decided by two justices in the same manner in which disputes as to salvage coming within the jurisdiction of justices are hereinbefore directed to be determined.

Disputed title to wreck, how to be decided.

473. If any party to such dispute is unwilling to refer the same to two justices, or, having so referred the same, is dissatisfied with their decision, he may within three months from the expiration of such year as aforesaid or from the date of such decision as aforesaid, as the case may be, take such proceedings as he may be advised in any Court of Law, Equity or Admiralty having jurisdiction in the matter, for establishing his title.

Appeal from decision of justices.

474. The Board of Trade shall have power, with the consent of the Treasury, out of the revenue arising under the eighth part of this act, for and on behalf of her Majesty, her heirs and successors, to purchase all such rights to wreck as may be possessed by any person or body corporate, other than her Majesty; and for the purpose of facilitating such purchases the provisions of the "Lands Clauses Consolidation Act, 1845," and the "Lands Clauses Consolidation (Scotland) Act, 1845," relating to the purchase of lands by agreement, shall be incorporated with this act; and in the construction of this act and the said incorporated acts this act shall be considered to be the "special act;" and any such rights to wreck as aforesaid shall be considered as an interest in land authorized to be taken by the special act, and her Majesty, her heirs and successors, shall be considered as the promoters of the undertaking.

Power of the Board of Trade on behalf of the Crown to purchase rights to wreck.

475. If no owner establishes his claim to wreck found at any place before the expiration of such period of a year as aforesaid, and if no admiral, vice-admiral, lord of any manor or person other than her Majesty, her heirs and successors, is proved to be entitled to such wreck, the receiver shall forthwith sell the same, and after payment of all expenses attending such sale, and deducting therefrom his fees, and all expenses (if any) incurred by him, and paying to the salvors such amount of salvage as the Board of Trade may in each case or by any general rule determine, pay the same into the receipt of her Majesty's exchequer in such manner as the Treasury may direct, and the same shall be carried to and form part of the consolidated fund of the United Kingdom.

Unclaimed wreck to be sold.

Jurisdiction of the High Court of Admiralty.

Jurisdiction of the High Court of Admiralty.

476. Subject to the provisions of this act, the High Court of Admiralty shall have jurisdiction to decide upon all claims whatsoever relating to salvage, whether the services in respect of which salvage is claimed were performed upon the high seas, or within the body of any county, or partly in one place and partly in the other, and whether the wreck is found at sea or cast upon the land, or partly in the sea and partly on land.

High Court of Admiralty may decide on all salvage cases, whether on sea or land.

Offences in respect of Wreck.

In case of ship wrecked being plundered by a tumultuous assemblage the hundred to be liable for damages.

7 & 8 G. 4, c. 31.

3 & 4 W. 4, c. 37, s. 72.

1 G. 1, st. 2, c. 5.

Penalty for plundering in cases of shipwreck, for obstructing the saving of shipwrecked property, and for secreting the same.

Penalty for selling wreck in foreign ports.

Dealers in Marine Stores and Manufacturers of Anchors.

Regulations to be observed by dealers in marine stores.

Offences in respect of Wreck.

477. Whenever any ship or boat is stranded or otherwise in distress on or near the shore of any sea or tidal water in the United Kingdom, and such ship or boat, or any part of the cargo or apparel thereof, is plundered, damaged or destroyed by any persons riotously and tumultuously assembled together, whether on shore or afloat, full compensation shall be made to the owner of such ship, boat, cargo or apparel, as follows; (that is to say,)

In England by the inhabitants of the hundred, wapentake, ward or district in the nature of a hundred, by whatever name denominated, in or nearest to which the said offence is committed, in manner provided by an act of the eighth year of the reign of King George the Fourth, chapter thirty-one, in case of the destruction of churches and other buildings by a riotous assemblage, or as near thereto as circumstances permit:

In Ireland by the inhabitants of the county, county of a city or town, barony, town or towns, parish or parishes, in or nearest to which such offence is committed, in manner provided by an act of the fourth year of the reign of King William the Fourth, chapter thirty-seven, for the recovery of satisfaction and amends for the malicious demolition of or injury to churches, chapels and other buildings used for religious worship, according to the usage of the united church of England and Ireland, or as near thereto as circumstances permit:

In Scotland, by the inhabitants of the county, city or borough in or nearest to which such offence is committed, in manner provided by an act of the first year of King George the First, statute two, chapter five, with respect to prosecutions for repairing the damages of any churches and other buildings, or as near thereto as circumstances permit:

478. Every person who does any of the following acts; (that is to say,)

(1.) Wrongfully carries away or removes any part of any ship or boat stranded or in danger of being stranded or otherwise in distress on or near the shore of any sea or tidal water, or any part of the cargo or apparel thereof, or any wreck; or

(2.) Endeavours in any way to impede or hinder the saving of such ship, boat, cargo, apparel or wreck; or

(3.) Secretes any wreck, or obliterates or defaces any marks thereon: Shall, in addition to any other penalty or punishment he may be subject to under this or any other act or law, for each such offence incur a penalty not exceeding fifty pounds; and every person, not being a receiver or a person hereinbefore authorized to take the command in cases of ships being stranded or in distress, or not acting under the orders of such receiver or person, who, without the leave of the master, endeavours to board any such ship or boat as aforesaid, shall for each offence incur a penalty not exceeding fifty pounds; and it shall be lawful for the master of such ship or boat to repel by force any such person so attempting to board the same.

479. If any person takes into any foreign port or place any ship or boat stranded, derelict or otherwise in distress on or near the shore of the sea or of any tidal water situate within the limits of the United Kingdom, or any part of the cargo or apparel thereof, or anything belonging thereto, or any wreck found within such limits as aforesaid, and there sell the same, he shall be guilty of felony, and be subject to penal servitude for a term not exceeding four years.

Dealers in Marine Stores and Manufacturers of Anchors.

480. Every person dealing in, buying and selling anchors, cables, sails or old junk, old iron or marine stores of any description, shall conform to the following regulations; (that is to say,)

- (1.) He shall have his name, together with the words "Dealer in marine stores," painted distinctly in letters of not less than six inches in length on every warehouse or other place of deposit belonging to him;

If he does not he shall incur a penalty not exceeding twenty pounds :

- (2.) He shall keep a book or books, fairly written, and shall enter therein an account of all such marine stores as he may from time to time become possessed of, stating, in respect of each article, the time at which and the person from whom he purchased or received the same, adding, in the case of every such last-mentioned person, a description of his business and place of abode ;

If he does not he shall incur for the first offence a penalty not exceeding twenty pounds, and for every subsequent offence a penalty not exceeding fifty pounds :

- (3.) He shall not, by himself or his agents, purchase marine stores of any description from any person apparently under the age of sixteen years ;

If he does so he shall incur for the first offence a penalty not exceeding five pounds, and for every subsequent offence a penalty not exceeding twenty pounds :

- (4.) He shall not cut up any cable, or any similar article, exceeding five fathoms in length, or unlay the same into twine or paper stuff, on any pretence whatever, without obtaining such permit and publishing such notice of his having so obtained the same as is hereinafter mentioned ;

If he does so he shall incur for the first offence a penalty not exceeding twenty pounds, and for every subsequent offence a penalty not exceeding fifty pounds.

481. In order to obtain such permit as aforesaid a dealer in marine stores shall make a declaration before some justice of the peace having jurisdiction over the place where such dealer resides containing the following particulars ; (that is to say,)

Manner of obtaining permit to cut up cables.

- (1.) A statement of the quality and description of the cable or other like article about to be cut up or unlayd ;
- (2.) A statement that he purchased or otherwise acquired the same *bonâ fide* and without fraud, and without any knowledge or suspicion that the same had been come by dishonestly ;
- (3.) A statement of the name and description of the person from whom he purchased or received the same :

And it shall be lawful for the justice before whom any such declaration is made, or for the receiver of the district in which such dealer in marine stores resides, upon the production of any such declaration as aforesaid, to grant a permit authorizing him to cut up or unlay such cable or other like article.

482. No dealer in marine stores who has obtained such permit as aforesaid shall proceed by virtue thereof to cut up or unlay any cable or other like article until he has for the space of one week at the least before doing any such act published in some newspaper published nearest to the place where he resides one or more advertisements notifying the fact of his having so obtained a permit, and specifying the nature of the cable or other article mentioned in the permit, and the place where the same is deposited, and the time at which the same is intended to be so cut up or unlayd ; and if any person suspects or believes that such cable or other article is his property, he may apply to any justice of the peace for a warrant ; and such justice of the peace may, on the applicant making oath, or, if a person entitled to make an affirmation, making an affirmation in support of such his suspicion or belief, grant a warrant by virtue whereof the applicant shall

Permit to be advertised before dealer proceeds to act thereon.

be entitled to require the production by such dealer as aforesaid of the cable or other article mentioned in the permit, and also of the book of entries hereinbefore directed to be kept by every dealer in marine stores; and, upon such cable or other article and book of entries being produced, to inspect and examine the same; and if any dealer in marine stores makes default in complying with any of the provisions of this section, he shall for the first offence incur a penalty not exceeding twenty pounds, and for every subsequent offence a penalty not exceeding fifty pounds.

Manufacturers to place marks on anchors.

483. Every manufacturer of anchors shall, in case of each anchor which he manufactures, mark in legible characters on the crown and also on the shank under the stock his name or initials, with the addition of a progressive number and the weight of such anchor; and if he makes default in doing so he shall for each offence incur a penalty not exceeding five pounds.

Salvage by H. M. Ships.

No claim for salvage services to be allowed in respect of loss or risk of her Majesty's ships or property.

Salvage by Her Majesty's Ships.

484. In cases where salvage services are rendered by any ship belonging to her Majesty or by the commander or crew thereof, no claim shall be made or allowed for any loss, damage or risk thereby caused to such ship, or to the stores, tackle or furniture thereof, or for the use of any stores or other articles belonging to her Majesty supplied in order to effect such services, or for any other expense or loss sustained by her Majesty by reason of such services.

Claims for salvage by her Majesty's officers not to be determined without consent of Admiralty.

485. No claim whatever on account of any salvage services rendered to any ship or cargo or to any appurtenances of any ship by the commander or crew or part of the crew of any of her Majesty's ships shall be finally adjudicated upon unless the consent of the Admiralty has first been obtained, such consent to be signified by writing under the hand of the secretary to the Admiralty; and if any person who has originated proceedings in respect of any such claim fails to prove such consent to the satisfaction of the Court, his suit shall stand dismissed and he shall pay all the costs of such proceedings; provided that any document purporting to give such consent and to be signed by the secretary to the Admiralty shall be *prima facie* evidence of such consent having been given.

Steps to be taken when salvage services have been rendered by her Majesty's ships abroad.

486. Whenever services for which salvage is claimed are rendered to any ship or cargo, or to any part of any ship or cargo, or to any appurtenances of any ship, at any place out of the United Kingdom and the four seas adjoining thereto, by the commander or crew or part of the crew of any of her Majesty's ships, the property alleged to be salvaged shall, if the salvor is justified by the circumstances of the case in detaining it at all, be taken to some port where there is either a consular officer or a Vice-Admiralty Court; and within twenty-four hours after arriving at such port the said salvor and the master or other person in charge of the property alleged to be salvaged shall each deliver to the consular officer or Vice-Admiralty Judge there a statement verified on oath, specifying, so far as they respectively can, and so far as the particulars required apply to the case,

- (1.) The place, condition and circumstances in which the said ship, cargo or property was at the time when the services were rendered for which salvage is claimed;
 - (2.) The nature and duration of the services rendered;
- And the salvor shall add to his statement,
- (3.) The proportion of the value of the said ship, cargo and property, and of the freight which he claims for salvage, or the values at which he estimates the said ship, freight, cargo and property re-

spectively, and the several amounts that he claims for salvage in respect of the same :

- (4.) Any other circumstances he thinks relevant to the said claim :
And the said master or other person in charge of the said ship, cargo or property shall add to his statement,
- (3.) A copy of the certificate of registry of the said ship, and of the indorsements thereon, stating any change which (to his knowledge or belief) has occurred in the particulars contained in such certificate ; and stating also, to the best of his knowledge and belief, the state of the title to the ship for the time being, and of the incumbrances and certificates of mortgage or sale, if any, affecting the same, and the names and places of business of the owners and incumbrancers :
- (4.) The name and place of business or residence of the freighter (if any) of the said ship, and the freight to be paid for the voyage she is then on :
- (5.) A general account of the quantity and nature of the cargo at the time the salvage services were rendered :
- (6.) The name and place of business or residence of the owner of such cargo and of the consignee thereof :
- (7.) The values at which the said master estimates the said ship, cargo and property, and the freight respectively, or, if he thinks fit, in lieu of such estimated value of the cargo, a copy of the ship's manifest :
- (8.) The amounts which the master thinks should be paid as salvage for the services rendered :
- (9.) An accurate list of the property saved, in cases where the ship is not saved :
- (10.) An account of the proceeds of the sale of the said ship, cargo or property, in cases where the same or any of them are sold at such port as aforesaid :
- (11.) The number, capacities, and condition of the crew of the said ship at the time the said services were rendered :
- (12.) Any other circumstances he thinks relevant to the matters in question :
- (13.) A statement of his willingness to execute a bond, in the form in the table marked W. in the schedule hereto, in such amount as the said consular officer or Vice-Admiralty Judge may fix.

487. The said consular officer or judge, as the case may be, shall within four days after receiving the aforesaid statements fix the amount to be inserted in the said bond at such sum as he thinks sufficient to answer the demand for the salvage services rendered ; but such sum shall not exceed one half of the value which in his estimation the said ship, freight and cargo, or any parts thereof in respect of which salvage is claimed, are worth ; and the said consular officer or judge may, if either of the aforesaid statements is not delivered to him within the time hereby required, proceed *ex parte*, but he shall in no case under this act require the cargo to be unladen ; and the said consular officer may in any proceeding under this act relating to salvage take affidavits and receive affirmations.

Consular officer or judge to fix amount for which a bond is to be given.

488. The said consular officer or judge shall send notice of the sum which he has so fixed as aforesaid to the said salvor and the said master ; and upon such master executing a bond in such form as aforesaid, with the said sum inserted therein, in the presence of the said officer or judge (who shall attest the same), and delivering the same to the said salvor, the right of the said salvor to detain or retain possession of the said ship, cargo or property, or any of them in respect of the said salvage claim, shall cease.

On master executing bond, the right of detention to cease.

Provision for additional security in the case of ships owned by persons resident out of her Majesty's dominions.

489. If the ship, cargo or property in respect of which the claim for salvage is made is not owned by persons domiciled in her Majesty's dominions, the right of the salvor to detain or retain possession thereof shall not cease unless the master procures, in addition to the said bond, such security for the due performance of the conditions thereof as the said officer or judge considers sufficient for the purpose, and places the same in the possession or custody of the said officer or judge, or, if the salvor so desires, in the possession or custody of the said officer or judge jointly with any other person whom the said salvor appoints for the purpose.

Documents to be sent to England.

490. The said consular officer or judge shall at the earliest opportunity transmit the said statements and documents so sent to him as aforesaid, and a notice of the sum he has so fixed as aforesaid, to the High Court of Admiralty of England, or if the said salvor and the said master or other person in charge as aforesaid agree that the said bond shall be adjudicated upon by any Vice-Admiralty Court, to such Court.

Whom the bond shall bind.

491. The said bond shall bind the respective owners of the said ship, freight and cargo, and their respective heirs, executors and administrators, for the salvage adjudged to be payable in respect of the said ship, freight and cargo respectively.

Court in which it is to be adjudicated on.

492. The said bond shall be adjudicated on and enforced by the High Court of Admiralty in England, or if the said salvor and master at the time of the execution of the said bond agree upon any Vice-Admiralty Court, then by such Vice-Admiralty Court; and any such Vice-Admiralty Court may in every proceeding under this act have and exercise all powers and authorities whatsoever which the said High Court of Admiralty now has or at any time may have in any proceeding whatsoever before it; and in cases where any security for the due performance of the conditions of the said bond has been placed in the possession or custody of the said consular officer or Vice-Admiralty Judge, or of such officer or judge jointly with any other person, the person or persons having the custody of such security shall respectively deal with the same in such manner as the Court that adjudicates on the bond directs.

Power of High Court of Admiralty to enforce bonds.

493. The said High Court of Admiralty shall have power to enforce any bond given in pursuance of this act in any Vice-Admiralty Court in any part of her Majesty's dominions; and all Courts in Scotland, Ireland, and the islands of Jersey, Guernsey, Alderney, Sark and Man exercising Admiralty jurisdiction shall, upon application, aid and assist the High Court of Admiralty in enforcing the said bonds.

Saving clause.

494. Any such salvor as aforesaid of any ship, cargo or property who elects not to proceed under this act shall have no power to detain the said ship, cargo or property, but may proceed otherwise for the enforcement of his salvage claim as if this act had not been passed; and nothing in this act contained shall abridge or affect the rights of salvors, except in the cases by it provided for.

Documents free from duty.

495. All bonds, statements, agreements, and other documents made or executed in pursuance of the eighth part of this act shall, if so made or executed out of the United Kingdom, be exempt from stamp duty.

Punishment for forgery and false representations.

496. Every person who in any proceeding under provisions contained in the eighth part of this act relating to salvage by her Majesty's ships, forges, assists in forging, or procures to be forged, fraudulently alters, assists in fraudulently altering, or procures to be fraudulently altered, any document, and every person who in any such proceeding puts off or makes use of any such forged or altered document, knowing the same to be so forged or

altered, or who in any such proceeding gives or makes, or assists in giving or making, or procures to be given or made, any false evidence or representation, knowing the same to be false, shall be punishable with imprisonment, with or without hard labour, for any period not exceeding two years, or, if summarily prosecuted and convicted, by imprisonment, with or without hard labour, for any period not exceeding six months.

Salvage, General.

497. Whenever services for which salvage is claimed are rendered either by the commander or crew or part of the crew of any of her Majesty's ships, or of any other ship, and the salvor voluntarily agrees to abandon his lien upon the ship, cargo and property alleged to be saved, upon the master or other person in charge thereof entering into a written agreement attested by two witnesses to abide the decision of the said High Court of Admiralty or of any Vice-Admiralty Court, and thereby giving security in that behalf to such amount as may be agreed on by the parties to the said agreement, such agreement shall bind the said ship and the said cargo and the freight payable therefor respectively, and the respective owners of the said ship, freight and cargo for the time being, and their respective heirs, executors and administrators, for the salvage which may be adjudged to be payable in respect of the said ship, cargo and freight respectively to the extent of the security so given as aforesaid, and may be adjudicated upon and enforced in the same manner as the bonds provided for by the eighth part of this act, in the case of detention for salvage services rendered by her Majesty's ships; and upon such agreement being made the salvor and the master or other person in charge as aforesaid shall respectively make such statements as are hereinbefore required to be made by them in case of a bond being given, except that such statements need not be made upon oath; and the salvor shall, as soon as practicable, transmit the said agreement and the said statements to the Court in which the said agreement is to be adjudicated upon.

Salvage (General).

Voluntary agreement may be made which shall have the same effect as the bond above mentioned.

498. Whenever the aggregate amount of salvage payable in respect of salvage services rendered in the United Kingdom has been finally ascertained, and exceeds two hundred pounds, and whenever the aggregate amount of salvage payable in respect of salvage services rendered elsewhere has been finally ascertained, whatever such amount may be, then if any delay or dispute arises as to the apportionment thereof, any Court having Admiralty jurisdiction may cause the same to be apportioned amongst the persons entitled thereto in such manner as it thinks just; and may for that purpose, if it thinks fit, appoint any person to carry such apportionment into effect, and may compel any person in whose hands or under whose control such amount may be to distribute the same, or to bring the same into Court, to be there dealt with as the Court may direct, and may for the purposes aforesaid issue such monitions or other processes as it thinks fit.

Powers for Courts having Admiralty jurisdiction to apportion salvage.

Miscellaneous.

499. All wreck, being foreign goods brought or coming into the United Kingdom or the Isle of Man, shall be subject to the same duties as if the same were imported into the United Kingdom or the Isle of Man respectively; and if any question arises as to the origin of such goods, they shall be deemed to be the produce of such country as the Commissioners of Customs may upon investigation determine.

Miscellaneous.

Foreign goods found derelict to be subject to the same duties as on importation.

500. The Commissioners of Customs and Excise shall permit all goods, wares and merchandise saved from any ship stranded or wrecked on its homeward voyage to be forwarded to the port of its original destination,

Goods saved from ships wrecked to be forwarded to the ports of their

original destination.

and all goods, wares and merchandise saved from any ship stranded or wrecked on its outward voyage to be returned to the port at which the same were shipped ; but such commissioners are to take security for the due protection of the revenue in respect of such goods, wares and merchandise.

Provision as to certain terms in Scotland.

501. All matters and things that may in pursuance of the eighth part of this act be done by or to any justice, or any two justices, may in Scotland be done also by or to the sheriff of the county, including the sheriff substitute ; and the expression " lord or lady of a manor " shall in the eighth part of this act, so far as regards Scotland, include " heritable proprietor duly infeft."

PART IX.

LIABILITY OF SHIPOWNERS.

Application.

Application of Part IX. of Act.

Application.

502. The ninth part of this act shall apply to the whole of her Majesty's dominions.

Limitation of Liability.

Owner not liable in respect of certain articles.

Limitation of Liability.

503. No owner of any sea-going ship or share therein shall be liable to make good any loss or damage that may happen without his actual fault or privity of or to any of the following things ; (that is to say,)

- (1.) Of or to any goods, merchandise or other things whatsoever taken in or put on board any such ship, by reason of any fire happening on board such ship :
- (2.) Of or to any gold, silver, diamonds, watches, jewels or precious stones taken in or put on board any such ship, by reason of any robbery, embezzlement, making away with or secreting thereof, unless the owner or shipper thereof has, at the time of shipping the same, inserted in his bills of lading or otherwise declared in writing to the master or owner of such ship the true nature and value of such articles,

To any extent whatever.

Measure of owner's liability.

504. No owner of any sea-going ship or share therein shall, in cases where all or any of the following events occur without his actual fault or privity ; (that is to say,)

- (1.) Where any loss of life or personal injury is caused to any person being carried in such ship :
- (2.) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship :
- (3.) Where any loss of life or personal injury is by reason of the improper navigation of such sea-going ship as aforesaid caused to any person carried in any other ship or boat :
- (4.) Where any loss or damage is by reason of any such improper navigation of such sea-going ship as aforesaid caused to any other ship or boat, or to any goods, merchandise or other things whatsoever, on board any other ship or boat :

Be answerable in damages to an extent beyond the value of his ship and the freight due or to grow due in respect of such ship during the voyage which at the time of the happening of any such events as aforesaid is in prosecution or contracted for, subject to the following proviso, (that is to say,) that in no case where any such liability as aforesaid is incurred in respect of loss of life or personal injury to any passenger, shall the value of any such ship and the freight thereof be taken to be less than fifteen pounds per registered ton (a).

(a) This section is repealed. See the M. S. A. Amendment Act, 1862, sect. 2, and Sched., Table (A).

505. *For the purposes of the ninth part of this act, the freight shall be deemed to include the value of the carriage of any goods or merchandise belonging to the owners of the ship, passage money and also the hire due or to grow due under or by virtue of any contract, except only such hire, in the case of a ship hired for time, as may not begin to be earned until the expiration of six months after such loss or damage (a).*

Value of carriage of goods and passage money to be considered as freight.

506. The owner of every sea-going ship or share therein shall be liable in respect of every such loss of life, personal injury, loss of or damage to goods as aforesaid arising on distinct occasions to the same extent as if no other loss, injury or damage had arisen.

Provision for separate losses.

Mode of Procedure.

Mode of Procedure.

507. Whenever any such liability as aforesaid has been or is alleged to have been incurred in respect of loss of life or personal injury, the Board of Trade may, in its discretion, after giving not less than three days' notice by post or otherwise to the party to be made defendant or defender, by warrant sealed with the seal of such Board or signed by one of its secretaries or assistant secretaries, require the sheriff having jurisdiction over any place in the United Kingdom to summon a jury at a time and place to be specified in such warrant for the purpose of determining the following question; (that is to say,)

In case of loss of life or personal injury, Board of Trade may direct proceedings.

The number, names, and descriptions of all persons killed or injured by reason of any wrongful act, neglect or default:

And upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior Courts, to meet at such time and place as aforesaid.

508. If either party to the inquiry desire any such question as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, is given to the Board of Trade before it has issued its warrant to the sheriff; and for that purpose the Board of Trade shall, by its warrant to the sheriff, require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him by themselves or their attorneys or agents at some convenient time and place appointed by him for the purpose of nominating a special jury; and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury in the manner in which such juries are required by the laws for the time being in force to be nominated or struck by the proper officers of the superior Courts; and the sheriff shall appoint a day, and shall on the day so appointed proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior Courts.

Either party may require question to be tried by a special jury.

509. The following provisions shall be applicable to the conduct of proceedings by the Board of Trade; (that is to say,)

Provisions for conduct of proceedings.

- (1.) The sheriff shall preside at such inquiry, and the Board of Trade shall be deemed in England and Ireland to be the plaintiff, and in Scotland the pursuer, both of which terms are hereinafter included in the term plaintiff, with power to appoint any agent to act on his behalf, and shall have all such rights and privileges as the plaintiff is entitled to in actions at law; and the owner or owners of the ship or ships by whom such liability as last aforesaid is alleged to have been incurred shall be deemed in England and Ireland to be the de-

(a) This section is repealed. See the M. S. A. Amendment Act, 1862, sect. 2, and Sched., Table (A).

fendant, and in Scotland the defender, both of which terms are hereinafter included in the term defendant :

- (2.) Not less than ten days' notice of the time and place of the inquiry shall be served by the Board of Trade on the defendant :
- (3.) Service on the master of any ship shall be deemed good service on the owner thereof, and the master shall, in respect of the proceedings on such inquiry, be deemed the agent and representative of the owner, with power to appear for him on such inquiry, and to do all matters and things which he might himself have done :
- (4.) If the defendant does not appear at the time of such inquiry, the same shall be proceeded with as if he had appeared, upon due proof of service of notice having been made on him in pursuance of this act :
- (5.) The empannelling of the jury and the summoning and attendance of witnesses shall be conducted and enforced in England and Ireland in manner provided by the Lands Clauses Consolidation Act, 1845, in cases of disputed compensation as to land, and in Scotland in manner provided by the Lands Clauses Consolidation (Scotland) Act, 1845, in like cases, or as near thereto as circumstances permit ; and all provisions in the said acts having reference to cases where any question of disputed compensation requires to be determined by the verdict of a jury shall, with the requisite alterations, be considered as incorporated with this act, and to have reference to cases where the question of the liability of any owner in respect of any such accident as aforesaid requires to be determined by the verdict of a jury :
- (6.) In England and Ireland the sheriff shall, if the Board of Trade so requires, or if the defendant so requires and the Board of Trade consents thereto, appoint as assessor a barrister at law of competent knowledge and standing :
- (7.) The costs incurred by all parties in and incidental to any such inquiry as aforesaid shall in England and Ireland be taxed by the master of one of her Majesty's superior Courts of Common Law as between attorney and client, and in Scotland by the auditor of the Court of Session as between agent and client ; and shall, if the verdict in any inquiry is in favour of the plaintiff, be paid by the defendant, but if such verdict is in favour of the defendant, be paid by the Board of Trade out of the Mercantile Marine Fund :
- (8.) The payment of all damages and costs in any such inquiry as aforesaid shall, upon application made to such superior Court as aforesaid by the party entitled thereto, be enforced by rule or order of such Court or a judge thereof, or otherwise as such Court or judge thinks fit :
- (9.) The Board of Trade may make any compromise it thinks fit as to the damages payable in respect of personal injury, or of the death of any person ; and any damages received in pursuance of such compromise shall, so far as the same extend, be applied in the same manner and be subject to the same rules as if the same were damages recovered on an inquiry instituted by the Board of Trade.

Rules as to damages and application thereof.

510. The following rules shall be observed as to the damages recovered in any such inquiry, and the application thereof ; (that is to say.)

- (1.) The damages payable in each case of death or injury shall be assessed at thirty pounds :
- (2.) The damages found due on any such inquiry as aforesaid shall be the first charge on the aggregate amount for which the owner is liable, and shall be paid thereout in priority to all other claims :
- (3.) All such damages as aforesaid shall be paid to her Majesty's Paymaster-General, and shall be distributed and dealt with by him in such manner as the Board of Trade directs ; and in directing such

distribution the Board of Trade shall have power in the first place to deduct and retain any costs incidental thereto; and in the next place, as regards the sums paid in respect of injuries, shall direct payment to each person injured of such compensation, not exceeding in any case the statutory amount, as the said Board thinks fit; and as regards the sums paid in respect of deaths shall direct payment thereof for the benefit of the husband, wife, parent and child of the deceased, or any of them, in such shares, upon such evidence, and in such manner as the said Board thinks fit:

- (4.) The Board of Trade shall refund to the owner any surplus remaining under its control after making such distribution as aforesaid, and the sum so refunded shall form part of the residue hereinafter mentioned:
- (5.) The Board of Trade shall not, nor shall any person acting under it, be liable to any action, suit, account, claim or demand whatsoever for or in respect of any act or matter done, or omitted to be done, in the distribution of such damages as aforesaid:
- (6.) If the amount paid to her Majesty's Paymaster-General in manner aforesaid is insufficient to meet the demands upon it, the several claims thereon shall abate proportionally.

511. After the completion of such inquiry as aforesaid, if any person injured estimates the damages payable in respect of such injury, or if the executor or administrator of any deceased person estimates the damages payable in respect of his death, at a greater sum than such statutory amount, or, in case of a compromise having been made by the Board of Trade, than the amount accepted by such Board by way of compensation for such injury or death as aforesaid, the person so estimating the same shall, upon repaying or obtaining the repayment by the Board of Trade to the owner of the amount paid by him to the Board of Trade in respect of such injury or death, be at liberty to bring an action for the recovery of damages in the same manner as if no power of instituting an inquiry had hereinbefore been given to the Board of Trade, subject to the following proviso; (that is to say,) that any damages recoverable by such person shall be payable only out of the residue, if any, of the aggregate amount for which the owner is liable, after deducting all sums paid to her Majesty's Paymaster-General in manner aforesaid; and if the damages recovered in such action do not exceed double the statutory amount, such person shall pay to the defendant in such action all the costs thereof, such costs to be taxed in England and Ireland as between attorney and client, and in Scotland as between agent and client.

Any person who is dissatisfied with the amount of statutory damage may bring an action on his own account.

512. In cases where loss of life or personal injury has occurred by any accident in respect of which the owner of any such ship as aforesaid is or is alleged to be liable in damages, no person shall be entitled to bring any action, or institute any suit or other legal proceeding in the United Kingdom, until the completion of the inquiry (if any) instituted by the Board of Trade, or until the Board of Trade has refused to institute the same; and the Board of Trade shall, for the purpose of entitling any person to bring an action or institute a suit or other legal proceeding, be deemed to have refused to institute such inquiry whenever notice has been served on it by any person of his desire to bring such action or institute such suit or other legal proceeding, and no inquiry is instituted by the Board of Trade in respect of the subject-matter of such intended action, suit or proceeding for the space of one month after the service of such notice.

If Board of Trade decline to institute proceedings, individuals may bring actions.

513. Whenever the Board of Trade, having refused in manner aforesaid to institute any inquiry, afterwards determines to institute the same, the damages and costs (if any) recovered on such inquiry shall be payable

Proceedings by Board of Trade after refusal.

rateably with and not in priority to the costs and damages recovered in any other action, suit or legal proceeding.

Proceedings in case of several claims being made on owner of ship.

514. In cases where any liability has been or is alleged to have been incurred by any owner in respect of loss of life, personal injury or loss of or damage to ships, boats or goods, and several claims are made or apprehended in respect of such liability, then, subject to the right hereinbefore given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, it shall be lawful in England or Ireland for the High Court of Chancery, and in Scotland for the Court of Session, and in any British possession for any competent Court, to entertain proceedings at the suit of any owner for the purpose of determining the amount of such liability subject as aforesaid, and for the distribution of such amount rateably amongst the several claimants, with power for any such Court to stop all actions and suits pending in any other Court in relation to the same subject-matter; and any proceeding entertained by such Court of Chancery or Court of Session, or other competent Court, may be conducted in such manner and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the Court thinks just.

Money paid for damage how to be accounted for between part owners.

515. All sums of money paid for or on account of any loss or damage in respect whereof the liability of the owners of any ship is limited by the ninth part of this act, and all costs incurred in relation thereto, may be brought into account among part owners of the same ship in the same manner as money disbursed for the use thereof.

Saving Clause.

Saving clause.

Saving Clause.

516. Nothing in the ninth part of this act contained shall be construed—To lessen or take away any liability to which any master or seaman, being also owner or part owner of the ship to which he belongs, is subject in his capacity of master or seaman; or
To extend to any British ship not being a recognized British ship within the meaning of this act.

PART X.

LEGAL PROCEDURE.

Application.

Application of Part X. of the Act.

Application.

517. The tenth part of this act shall in all cases, where no particular country is mentioned, apply to the whole of her Majesty's dominions.

Legal Procedure (General).

Punishment of offences, and recovery of penalties.

Legal Procedure (General).

518. In all places within her Majesty's dominions, except Scotland, the offences hereinafter mentioned shall be punished and penalties recovered in manner following; (that is to say,)

(1.) Every offence by this act declared to be a misdemeanor shall be punishable by fine or imprisonment, with or without hard labour; and the Court before which such offence is tried may in England make the same allowances and order payment of the same costs and expenses as if such misdemeanor had been enumerated in the act passed in the seventh year of his late Majesty King George the Fourth, chapter sixty-four, or any other act that may be passed for the like purpose; and may in any other part of her Majesty's dominions make such allowances and order payment of such costs

and expenses (if any) as are payable or allowable upon the trial of any misdemeanor under any existing act or ordinance, or as may be payable or allowable under any act or law for the time being in force therein :

- (2.) Every offence declared by this act to be a misdemeanor shall also be deemed to be an offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by a penalty not exceeding one hundred pounds, and may be prosecuted accordingly in a summary manner instead of being prosecuted as a misdemeanor :
- (3.) Every offence hereby made punishable by imprisonment for any period not exceeding six months, with or without hard labour, or by any penalty not exceeding one hundred pounds, shall in England and Ireland be prosecuted summarily before any two or more justices, as to England in the manner directed by the act of the eleventh and twelfth years of the reign of her Majesty Queen Victoria, chapter forty-three, and as to Ireland in the manner directed by the act of the fourteenth and fifteenth years of the reign of her Majesty Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any act or acts that may be passed for like purposes : and all provisions contained in the said acts shall be applicable to such prosecutions in the same manner as if the offences in respect of which the same are instituted were hereby stated to be offences in respect of which two or more justices have power to convict summarily or to make a summary order :
- (4.) In all cases of summary convictions in England, where the sum adjudged to be paid exceeds five pounds, or the period of imprisonment adjudged exceeds one month, any person who thinks himself aggrieved by such conviction may appeal to the next Court of General or Quarter Sessions which is holden not less than twelve days after the day of such conviction for the county, city, borough, liberty, riding, division or place wherein the case has been tried ; provided that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such Sessions, and shall also either remain in custody until the Sessions, or enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said Sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded ; and upon such notice being given, and such recognizance being entered into, the justice before whom the same shall be entered into shall liberate such person, if in custody ; and the Court at such Sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet ; and in case of the dismissal of the appeal, or the affirmance of the conviction, shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as may be awarded, and shall, if necessary, issue process for enforcing such judgment :
- (5.) All offences under this act shall in any British possession be punishable in any Court or by any justice of the peace or magistrate in which or by whom offences of a like character are ordinarily punishable, or in such other manner, or by such other Courts, justices or magistrates, as may from time to time be determined by any act or ordinance duly made in such possession, in such manner as acts and ordinances in such possession are required to be made in order to have the force of law.

Stipendiary magistrate to have same power as two justices.

Offence where deemed to have been committed.

Jurisdiction over ships lying off the coast.

Service to be good if made personally, or on board ship.

Sums ordered to be paid leviable by distress on ship.

Application of penalties.

Limitation of time in summary proceedings.

519. Any stipendiary magistrate shall have full power to do alone whatever two justices of the peace are by this act authorized to do.

520. For the purpose of giving jurisdiction under this act, every offence shall be deemed to have been committed, and every cause of complaint to have arisen, either in the place in which the same actually was committed or arose, or in any place in which the offender or person complained against may be.

521. In all cases where any district within which any Court or justice of the peace or other magistrate has jurisdiction either under this act or under any other act or at common law for any purpose whatever is situate on the coast of any sea, or abutting on or projecting into any bay, channel, lake, river or other navigable water, every such Court, justice of the peace, or magistrate shall have jurisdiction over any ship or boat being on or lying or passing off such coast, or being in or near such bay, channel, lake, river or navigable water as aforesaid, and over all persons on board such ship or boat or for the time being belonging thereto, in the same manner as if such ship, boat or persons were within the limits of the original jurisdiction of such Court, justice or magistrate.

522. Service of any summons or other matter in any legal proceeding under this act shall be good service, if made personally on the person to be served, or at his last place of abode, or if made by leaving such summons for him on board any ship to which he may belong, with the person being or appearing to be in command or charge of such ship.

523. In all cases where any Court, justice or justices of the peace, or other magistrate, has or have power to make an order directing payment to be made of any seaman's wages, penalties or other sums of money, then, if the party so directed to pay the same is the master or owner of a ship, and the same is not paid at the time and in manner prescribed in the order, the Court, justice or justices, or other magistrate who made the order, may, in addition to any other powers they or he may have for the purpose of compelling payment, direct the amount remaining unpaid to be levied by distress or pouncing and sale of the said ship, her tackle, furniture and apparel.

524. Any Court, justice or magistrate imposing any penalty under this act, for which no specific application is herein provided, may, if it or he thinks fit, direct the whole or any part thereof to be applied in compensating any person for any wrong or damage which he may have sustained by the act or default in respect of which such penalty is imposed, or to be applied in or towards payment of the expenses of the proceedings; and, subject to such directions or specific application as aforesaid, all penalties recovered in the United Kingdom shall be paid into the receipt of her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the consolidated fund of the United Kingdom; and all penalties recovered in any British possession shall be paid over into the public treasury of such possession, and form part of the public revenue thereof.

525. The time for instituting summary proceedings under this act shall be limited as follows; (that is to say),

- (1.) No conviction for any offence shall be made under this act in any summary proceeding instituted in the United Kingdom, unless such proceeding is commenced within six months after the commission of the offence; or if both or either of the parties to such proceeding happen during such time to be out of the United Kingdom, unless

the same is commenced within two months after they both first happen to arrive or to be at one time within the same :

- (2.) No conviction for any offence shall be made under this act in any proceeding instituted in any British possession, unless such proceeding is commenced within six months after the commission of the offence ; or if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any Court capable of dealing with the case, unless the same is commenced within two months after they both first happen to arrive or to be at one time within such jurisdiction :
- (3.) No order for the payment of money shall be made under this act in any summary proceeding instituted in the United Kingdom unless such proceeding is commenced within six months after the cause of complaint arises ; or, if both or either of the parties happen during such time to be out of the United Kingdom, unless the same is commenced within six months after they both first happen to arrive or to be at one time within the same :
- (4.) No order for the payment of money shall be made under this act in any summary proceeding instituted in any British possession, unless such proceeding is commenced within six months after the cause of complaint arises ; or, if both or either of the parties to the proceeding happen during such time not to be within the jurisdiction of any Court capable of dealing with the case, unless the same is commenced within six months after they both first happen to arrive or be at one time within such jurisdiction :

And no provision contained in any other act or acts, ordinance or ordinances, for limiting the time within which summary proceedings may be instituted shall affect any summary proceeding under this act.

526. Any document required by this act to be executed in the presence of or to be attested by any witness or witnesses, may be proved by the evidence of any person who is able to bear witness to the requisite facts, without calling the attesting witness or witnesses or any of them.

Document proved without calling attesting witness.

527. Whenever any injury has, in any part of the world, been caused to any property belonging to her Majesty or to any of her Majesty's subjects by any foreign ship, if at any time thereafter such ship is found in any port or river of the United Kingdom or within three miles of the coast thereof, it shall be lawful for the judge of any Court of Record in the United Kingdom, or for the judge of the High Court of Admiralty, or in Scotland the Court of Session, or the sheriff of the county within whose jurisdiction such ship may be, upon its being shown to him by any person applying summarily that such injury was probably caused by the misconduct or want of skill of the master or mariners of such ship, to issue an order directed to any officer of customs or other officer named by such judge, requiring him to detain such ship until such time as the owner, master or consignee thereof has made satisfaction in respect of such injury, or has given security, to be approved by the judge, to abide the event of any action, suit or other legal proceeding that may be instituted in respect of such injury, and to pay all costs and damages that may be awarded thereon ; and any officer of customs or other officer to whom such order is directed shall detain such ship accordingly.

Power of Judge of Court of Record or Admiralty to arrest foreign ship that has occasioned damage.

528. In any case where it appears that before any application can be made under the foregoing section such foreign ship will have departed beyond the limits therein mentioned, it shall be lawful for any commissioned officer on full pay in the military or naval service of her Majesty, or any British officer of customs, or any British consular officer, to detain such ship until such time as will allow such application to be made and the result thereof to be communicated to him ; and no such officer shall be

Power in certain cases to detain ship before application made to judge..

liable for any costs or damages in respect of such detention unless the same is proved to have been made without reasonable grounds.

Who to be defendant to suit in such cases.

529. In any action, suit or other proceeding in relation to such injury, the person so giving security as aforesaid shall be made defendant or defender, and shall be stated to be the owner of the ship that has occasioned such damage; and the production of the order of the judge made in relation to such security shall be conclusive evidence of the liability of such defendant or defender to such action, suit or other proceeding.

Legal Procedure (Scotland).

Legal Procedure (Scotland).

Offences punishable as misdemeanors.

530. In Scotland, every offence which by this act is described as a felony or misdemeanor may be prosecuted by indictment or criminal letters at the instance of her Majesty's advocate before the High Court of Justiciary, or by criminal libel at the instance of the procurator fiscal of the county before the sheriff, and shall be punishable with fine and with imprisonment, with or without hard labour in default of payment, or with imprisonment, with or without hard labour, or with both, as the Court may think fit, or in the case of felony with penal servitude, where the Court is competent thereto; and such Court may also, if it think fit, order payment by the offender of the costs and expenses of the prosecution.

Summary proceedings.

531. In Scotland, all prosecutions, complaints, actions or proceedings under this act, other than prosecutions for felonies or misdemeanors, may be brought in a summary form before the sheriff of the county, or before any two justices of the peace of the county or burgh where the cause of such prosecution or action arises, or where the offender or defender may be for the time, and when of a criminal nature, or for penalties, at the instance of the procurator fiscal of Court, or at the instance of any party aggrieved, with concurrence of the procurator fiscal of Court; and the Court may, if it think fit, order payment by the offender or defender of the costs of the prosecution or action.

Form of complaint.

532. In Scotland, all prosecutions, complaints, actions or other proceedings under this act may be brought either in a written or printed form, or partly written and partly printed, and where such proceedings are brought in a summary form it shall not be necessary in the complaint to recite or set forth the clause or clauses of the act on which such proceeding is founded, but it shall be sufficient to specify or refer to such clause or clauses, and to set forth shortly the cause of complaint or action, and the remedy sought; and when such complaint or action is brought in whole or in part for the enforcement of a pecuniary debt or demand, the complaint may contain a prayer for warrant to arrest upon the dependence.

Mode of requiring appearance of defender and witnesses.

533. In Scotland, on any complaint or other proceeding brought in a summary form under this act being presented to the sheriff clerk or clerk of the peace, he shall grant warrant to cite the defender to appear personally before the said sheriff or justices of the peace on a day fixed, and at the same time shall appoint a copy of the same to be delivered to him by a sheriff officer or constable, as the case may be, along with the citation; and such deliverance shall also contain a warrant for citing witnesses and havers to compare at the same time and place to give evidence and produce such writs as may be specified in their citation; and where such warrant has been prayed for in the complaint or other proceeding, the deliverance of the sheriff clerk or clerk of the peace shall also contain warrant to arrest upon the dependence in common form: Provided always, that where the apprehension of any party, with or without a warrant, is authorized by this act, such party may be detained in custody until he can be brought at the earliest opportunity before any two justices, or the sheriff who may have

jurisdiction in the place, to be dealt with as this act directs, and no citation or induciæ shall in such case be necessary.

534. When it becomes necessary to execute such arrestment on the dependence against goods or effects of the defender within Scotland, but not locally situated within the jurisdiction of the sheriff or justices of the peace by whom the warrant to arrest has been granted, it shall be competent to carry the warrant into execution on its being indorsed by the sheriff clerk or clerk of the peace of the county or burgh respectively within which such warrant comes to be executed. Backing arrestments.

535. In all proceedings under this act in Scotland the sheriff or justices of the peace shall have the same power of compelling attendance of witnesses and havers as in cases falling under their ordinary jurisdiction. Compelling attendance of witnesses.

536. The whole procedure in cases brought in a summary form before the sheriff or justices of the peace in Scotland shall be conducted *vivâ voce*, without written pleadings, and without taking down the evidence in writing, and no record shall be kept of the proceedings, other than the complaint, and the sentence or decree pronounced thereon. Proceedings to be vivâ voce.

537. It shall be in the power of the sheriff or justices of the peace in Scotland to adjourn the proceedings from time to time to any day or days to be fixed by them, in the event of absence of witnesses or of any other cause which shall appear to them to render such adjournment necessary. Power to adjourn.

538. In Scotland, all sentences and decrees to be pronounced by the sheriff or justices of the peace upon such summary complaints shall be in writing; and where there is a decree for payment of any sum or sums of money against a defender, such decree shall contain warrant for arrestment, poinding and imprisonment in default of payment, such arrestment, poinding or imprisonment to be carried into effect by sheriffs' officers or constables, as the case may be, in the same manner as in cases arising under the ordinary jurisdiction in the sheriff or justices: Provided always, that nothing herein contained shall be taken or construed to repeal or affect an act of the fifth and sixth years of William the Fourth, intituled "An Act for abolishing, in Scotland, Imprisonment for Civil Debts of Small Amount." Sentence to be in writing.
Imprisonment to be inflicted in default of payment.
5 & 6 W. 4, c. 70.

539. In all summary complaints and proceedings for recovery of any penalty or sum of money in Scotland, if a defender who has been duly cited shall not appear at the time and place required by the citation, he shall be held as confessed, and sentence or decree shall be pronounced against him in terms of the complaint, with such costs and expenses as to the Court shall seem fit: Provided always, that he shall be entitled to obtain himself reponed against any such decree at any time before the same be fully implemented, by lodging with the clerk of Court a reponing note, and consigning in his hands the sum decerned for, and the costs which had been awarded by the Court, and on the same day delivering or transmitting through the post to the pursuer or his agent a copy of such reponing note; and a certificate by the clerk of Court of such note having been lodged shall operate as a sist of diligence till the cause shall have been reheard and finally disposed of, which shall be on the next sitting of the Court, or on any day to which the Court shall then adjourn it. Sentence and penalties in default of defender's appearance.

540. In all summary complaints or other proceedings not brought for the recovery of any penalty or sum of money in Scotland, if a defender, being duly cited, shall fail to appear, the sheriff or justices may grant warrant to apprehend and bring him before the Court. Warrant to apprehend in default of appearance.

Backings sentences or decrees.

541. In all cases where sentences or decrees of the sheriff or justices require to be enforced within Scotland, but beyond the jurisdiction of the sheriff or justices by whom such sentences or decrees have been pronounced, it shall be competent to carry the same into execution upon the same, being indorsed by the sheriff clerk or clerk of the peace of the county or burgh within which such execution is to take place.

Orders not to be quashed for want of form; and to be final.

542. No order, decree or sentence pronounced by any sheriff or justice of the peace in Scotland under the authority of this act shall be quashed or vacated for any misnomer, informality or defect of form; and all orders, decrees and sentences so pronounced shall be final and conclusive, and not subject to suspension, advocacy, reduction, or to any form of review or stay of execution, except on the ground of corruption or malice on the part of the sheriff or justices, in which case the suspension, advocacy or reduction must be brought within fourteen days of the date of the order, decree or sentence complained of: Provided always, that no stay of execution shall be competent to the effect of preventing immediate execution of such order, decree or sentence.

General rules, so far as applicable, to extend to penalties and proceedings in Scotland.

543. Such of the general provisions with respect to jurisdiction, procedure and penalties contained in this act as are not inconsistent with the special rules hereinbefore laid down for the conduct of legal proceedings and the recovery of penalties in Scotland, shall, so far as the same are applicable, extend to such last-mentioned proceedings and penalties: Provided always, that nothing in this act contained shall be held in any way to annul or restrict the common law of Scotland with regard to the prosecution or punishment of offences at the instance or by the direction of the Lord Advocate, or the rights of owners or creditors in regard to enforcing a judicial sale of any ship and tackle, or to give to the High Court of Admiralty of England any jurisdiction in respect of salvage in Scotland which it has not heretofore had or exercised.

PART XI.

MISCELLANEOUS.

Miscellaneous.

Contracts may be made with natives in India, under certain conditions, binding them to go to Australia, and thence to serve in other ships to the United Kingdom.

544. It shall be lawful for any master or owner of a ship, or his agent, to enter into contracts with Lascars or natives of the territories of the East India Company, binding them to proceed to any port or ports in the Australian colonies either as seamen or as passengers, and there to engage themselves as seamen in any ship which may happen to be there and to be bound to the United Kingdom or to any other part of her Majesty's dominions; provided that every such contract shall be in such form, and shall contain such provisions, and shall be executed in such manner, and under such conditions for securing the return of such Lascars or natives to their own country, and for other purposes, as the Governor-General of India in council, or the governors of the respective presidencies in which the contract is made, in council, may direct; and if any Lascar or other person who has bound himself by any such contract is, on arriving in any of the said colonies, required to enter into an agreement to serve as a seaman in any ship bound for the United Kingdom or to any other part of her Majesty's dominions, and if it is certified by some officer appointed for that purpose by the governor of the said colony that such agreement is a proper agreement in all respects for such Lascar or other person to enter into, and is in accordance with the original contract, and that the ship to which such agreement relates is a proper ship for such Lascar or other person to serve in, and is properly supplied with provisions, and that there is not in the opinion of such officer any objection to the full performance of the said contract, such Lascar or other person shall be bound to enter into the said agreement, and to serve as a seaman in the ship to which it

relates, and shall thereupon be deemed to be for all purposes one of the crew of the ship; and if he refuses to enter into such agreement he shall, notwithstanding such refusal, be liable to the same consequences, and be dealt with in all respects in the same manner, as if he had voluntarily entered into the same; and for every Lascar or other person in respect of whom such certificate is applied for, the person applying for the same shall pay to such officer as aforesaid such fee as the governor of the colony may appoint.

545. Nothing in this act contained shall be taken to repeal or alter any of the provisions of the "Passengers Act, 1852," or of the act of the seven-teenth year of her present Majesty, chapter eighty-four:

Act not to affect
Passenger Acts,
15 & 16 Vict.
c. 44; 16 & 17
Vict. c. 84.

546. The municipal corporation of any borough, being a seaport in the United Kingdom, and any body corporate, association or trustees in any such seaport, existing or constituted for any public purposes relating to the government or benefit of persons engaged in the British merchant service, or to the management of docks and harbours, or for any other public purposes connected with shipping or navigation, may, with the consent of her Majesty's Secretary of State for the Home Department, appropriate any lands vested in them or in trustees for them as a site or sites for a sailors' home or sailors' homes, and may for that purpose either retain and apply the same accordingly, or convey the same to trustees, with such powers for appointing new trustees and continuing the trust as they think fit.

Corporations, &c.
may grant site
for sailors' homes.

547. The legislative authority of any British possession shall have power, by any act or ordinance, confirmed by her Majesty in council, to repeal, wholly or in part, any provisions of this act relating to ships registered in such possession; but no such act or ordinance shall take effect until such approval has been proclaimed in such possession, or until such time there-after as may be fixed by such act or ordinance for the purpose.

Power of Colonial
Legislatures to
alter provisions of
act.

548. All expenses incurred by the Commissioners of Customs in the conduct of suits or prosecutions, or otherwise in carrying into effect the provisions of this act, shall be considered as expenses having reference to the revenue of customs, and shall be paid out of the consolidated customs; but the Board of Trade may, with the consent of the Treasury, repay out of the Mercantile Marine Fund all or any part of such of the expenses so paid as are by the provisions of this act chargeable on the said fund.

Expenses in-
curred by Com-
missioners of
Customs to be
paid out of the
Consolidated
Customs.

Backings sentences or decrees.

541. In all cases where sentences or decrees of the sheriff or justices require to be enforced within Scotland, but beyond the jurisdiction of the sheriff or justices by whom such sentences or decrees have been pronounced, it shall be competent to carry the same into execution upon the same being indorsed by the sheriff clerk or clerk of the peace of the county or burgh within which such execution is to take place.

Orders not to be quashed for want of form; and to be final.

542. No order, decree or sentence pronounced by any sheriff or justice of the peace in Scotland under the authority of this act shall be quashed or vacated for any misnomer, informality or defect of form; and all orders, decrees and sentences so pronounced shall be final and conclusive, and not subject to suspension, advocacy, reduction, or to any form of review or stay of execution, except on the ground of corruption or malice on the part of the sheriff or justices, in which case the suspension, advocacy or reduction must be brought within fourteen days of the date of the order, decree or sentence complained of: Provided always, that no stay of execution shall be competent to the effect of preventing immediate execution of such order, decree or sentence.

General rules, so far as applicable, to extend to penalties and proceedings in Scotland.

543. Such of the general provisions with respect to jurisdiction, procedure and penalties contained in this act as are not inconsistent with the special rules hereinbefore laid down for the conduct of legal proceedings and the recovery of penalties in Scotland, shall, so far as the same are applicable, extend to such last-mentioned proceedings and penalties: Provided always, that nothing in this act contained shall be held in any way to annul or restrict the common law of Scotland with regard to the prosecution or punishment of offences at the instance or by the direction of the Lord Advocate, or the rights of owners or creditors in regard to enforcing a judicial sale of any ship and tackle, or to give to the High Court of Admiralty of England any jurisdiction in respect of salvage in Scotland which it has not heretofore had or exercised.

PART XI.

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relates, and shall thereupon be deemed to be for all purposes one of the crew of the ship; and if he refuses to enter into such agreement he shall, notwithstanding such refusal, be liable to the same consequences, and be dealt with in all respects in the same manner, as if he had voluntarily entered into the same; and for every Lascar or other person in respect of whom such certificate is applied for, the person applying for the same shall pay to such officer as aforesaid such fee as the governor of the colony may appoint.

545. Nothing in this act contained shall be taken to repeal or alter any of the provisions of the "Passengers Act, 1852," or of the act of the seven-teenth year of her present Majesty, chapter eighty-four:

Act not to affect
Passenger Acts,
15 & 16 Vict.
c. 44; 16 & 17
Vict. c. 84.

546. The municipal corporation of any borough, being a seaport in the United Kingdom, and any body corporate, association or trustees in any such seaport, existing or constituted for any public purposes relating to the government or benefit of persons engaged in the British merchant service, or to the management of docks and harbours, or for any other public purposes connected with shipping or navigation, may, with the consent of her Majesty's Secretary of State for the Home Department, appropriate any lands vested in them or in trustees for them as a site or sites for a sailors' home or sailors' homes, and may for that purpose either retain and apply the same accordingly, or convey the same to trustees, with such powers for appointing new trustees and continuing the trust as they think fit.

Corporations, &c.
may grant site
for sailors' homes.

547. The legislative authority of any British possession shall have power, by any act or ordinance, confirmed by her Majesty in council, to repeal, wholly or in part, any provisions of this act relating to ships registered in such possession; but no such act or ordinance shall take effect until such approval has been proclaimed in such possession, or until such time there-after as may be fixed by such act or ordinance for the purpose.

Power of Colonial
Legislatures to
alter provisions of
act.

548. All expenses incurred by the Commissioners of Customs in the conduct of suits or prosecutions, or otherwise in carrying into effect the provisions of this act, shall be considered as expenses having reference to the revenue of customs, and shall be paid out of the consolidated customs; but the Board of Trade may, with the consent of the Treasury, repay out of the Mercantile Marine Fund all or any part of such of the expenses so paid as are by the provisions of this act chargeable on the said fund.

Expenses in-
curred by Com-
missioners of
Customs to be
paid out of the
Consolidated
Customs.

°° The first portion of the *SCHEDULE* to this *ACT* contains *Forms* authorized by *Part II.* of the *Act*, and applicable to the ownership, registry, sale and mortgage of British ships. By sect. 96, the Commissioners of Customs are empowered, with the consent of the Board of Trade, to make such alterations in these *Forms* as they may deem requisite, public notice being previously given. The *Forms* as now issued will be found, post.

The following is the remainder of the *SCHEDULE* :—

TABLE P. (See Section 125.)

Fees to be charged for Matters transacted at Shipping Offices.

1. Engagement of Crews.				3. Discharge of Crews.			
		£	s. d.			£	s. d.
In ships under	60 tons	..	0 4 0	In ships under	60 tons	..	0 4 0
60 to 100	"	..	0 7 0	60 to 100	"	..	0 7 0
100 to 200	"	..	0 15 0	100 to 200	"	..	0 15 0
200 to 300	"	..	1 0 0	200 to 300	"	..	1 0 0
300 to 400	"	..	1 5 0	300 to 400	"	..	1 5 0
400 to 500	"	..	1 10 0	400 to 500	"	..	1 10 0
500 to 600	"	..	1 15 0	500 to 600	"	..	1 15 0
600 to 700	"	..	2 0 0	600 to 700	"	..	2 0 0
700 to 800	"	..	2 5 0	700 to 800	"	..	2 5 0
800 to 900	"	..	2 10 0	800 to 900	"	..	2 10 0
900 to 1,000	"	..	2 15 0	900 to 1,000	"	..	2 15 0
Above 1,000	"	..	3 0 0	Above 1,000	"	..	3 0 0
And so on for ships of larger tonnage, adding for every 100 tons above 1,000, five shillings.				And so on for ships of larger tonnage, adding for every 100 tons above 1,000, five shillings.			
2. Engagement of Seamen separately. Two shillings for each.				4. Discharge of Seamen separately. Two shillings for each.			

TABLE Q. (See Section 126.)

Sums to be deducted from Wages by way of partial Repayment of Fees in Table P.

1. In respect of Engagements and Discharges of Crews, upon each Engagement and each Discharge.			2. In respect of Engagements and Discharges of Seamen separately, upon each Engagement and each Discharge.		
From wages of any mate, purser,	s.	d.	One shilling.		
engineer, surgeon,					
carpenter or steward	..	1 6			
" " all others except apprentices..	..	1 0			

TABLE R. (See Section 133.)

Fees to be charged on Examinations.

	£	s.	d.
For a certificate as master	2 0 0
For a certificate as mate	1 0 0

TABLE U.—(continued.)

INWARDS.																
From	To	Under 7 Feet.	From 7 Feet. 10 Feet.	11 Feet.	12 Feet.	13 Feet.	14 Feet.	15 Feet.	16 Feet.	17 Feet.	18 Feet.	19 Feet.	20 Feet.	21 Feet.	22 Feet.	23 Feet and upwards.
{ The Downs...	Nore, Sheerness, Standgate Creek, Gravesend ...	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.
	Long Reach	5 5 0	7 17 6	8 13 3	9 9 0	10 4 9	11 0 6	11 16 3	12 12 0	13 7 9	14 1 3	15 0 0	16 0 32	1 0 24	5 0 28	9 2 28
	Blackwall or London ...	5 16 0	8 8 6	9 9 0	10 4 10	11 3 0	11 13 10	12 13 18	13 14 0	14 0 15	15 0 9	16 4 21	17 4 26	5 1 26	9 3 28	13 30
	Standgate Creek Gravesend ..	6 12 3	8 19 6	10 4 9	11 0 6	12 1 6	13 17 3	14 0 4	15 16 0	16 13 9	17 5 19	18 3 23	19 8 32	9 3 28	13 3	17 4

Note 1.—Foreign ships are to pay one-fourth more than British ships, except when privileged to enter the ports of the United Kingdom upon paying the same duties of tonnage as are paid by British ships, in which cases such ships are to pay the same rates of pilotage only as are payable by British ships.

Note 2.—For half a foot exceeding the above draughts of water, the medium price between the two limits.—For intermediate distances a proportionate rate.

For putting a Pilot on board, and for Pilotage of Ships to the Anchorage to the Downs.*	60 Tons, and under 150	150 Tons, and under 250	250 Tons, and under 400	400 Tons, and upwards
	£ s. d.	£ s. d.	£ s. d.	£ s. d.
From off Duneness to off Folkestone, the Church bearing N.N.W. by compass ...	2 0 0	3 0 0	3 10 0	4 0 0
From off Folkestone to the South Foreland the Lights in use ...	1 10 0	2 0 0	2 10 0	3 0 0
From off the South Foreland to the Downs ...	1 5 0	1 5 0	1 10 0	2 0 0

In the River Thames, above Gravesend. { For a boat of a class carrying an anchor of above 4 cwt. with a corresponding tow line 2 cwt. 1 1 0 } Per trip for the whole distance from Gravesend to London, and in proportion for any part of that distance. Do. ... under 2 cwt. 0 15 0 And for each man's service in those boats, 8s. per tide.

For removing a ship from moorings into a dry or wet dock.

For a ship under 300 tons	...	...	...	...	...	£0 15 0
" 300 to 600 "	...	...	...	...	...	1 1 0
" 600 to 1,000 "	...	...	...	...	...	1 11 6
" above 1,000 "	...	...	...	...	...	2 2 0

* When the pilot is put on board by a boat from the shore, one-seventh to the pilot, and the remaining six-sevenths to the boat and crew.

TABLE V. (See Section 455.)
FEES AND REMUNERATION OF RECEIVERS.

	£	s.	d.
For every examination on oath instituted by a receiver with respect to any ship or boat which may be or may have been in distress, a fee not exceeding	1	0	0
But so that in no case shall a larger fee than two pounds be charged for examinations taken in respect of the same ship and the same occurrence, whatever may be the number of the deponents.			
For every report required to be sent by the receiver to the secretary of the committee for managing the affairs of Lloyd's in London, the sum of	0	10	0
For wreck taken by the receiver into his custody, a per-centage of five per cent. upon the value thereof, But so that in no case shall the whole amount of per-centage so payable exceed twenty pounds.			
In cases where any services are rendered by a receiver, in respect of any ship or boat in distress, not being wreck, or in respect of the cargo or other articles belonging thereto, the following fees instead of a per-centage; that is to say, If such ship or boat with her cargo equals or exceeds in value six hundred pounds, the sum of two pounds for the first, and the sum of one pound for every subsequent day during which the receiver is employed on such service, but if such ship or boat with her cargo is less in value than six hundred pounds, one moiety of the above-mentioned sum.			

TABLE W. (See Section 486.)

SALVAGE BOND.

[N.B.—Any of the particulars not known, or not required, by reason of the claim being only against the cargo, &c., may be omitted.]

WHEREAS certain salvage services are alleged to have been rendered by the ship [insert names of ship and of commander], commander, to the merchant ship [insert names of ship and master], master, belonging to [name and place of business or residence of owner of ship], freighted by [the same of the freighter], and to the cargo therein, consisting of [state very shortly the descriptions and quantities of the goods, and the names and addresses of their owners and consignees]:

And whereas the said ship and cargo have been brought into the port of [insert name and situation of port], and a statement of the salvage claim has been sent to [insert the name of the consular officer or Vice-Admiralty Judge, and of the office he fills], and he has fixed the amount to be inserted in this bond at the sum of [state the sum]:

Now I, the said [master's name], do hereby, in pursuance of the Merchant Shipping Act, 1854, bind the several owners for the time being of the said ship and of the cargo therein, and of the freight payable in respect of such cargo, and their respective heirs, executors and administrators, to pay among them such sum not exceeding the said sum of [state the sum fixed], in such proportions and to such persons as [if the parties agree on any other Court, substitute the name of it here] the High Court of Admiralty in England shall adjudge to be payable as salvage for the services so alleged to have been rendered as aforesaid.

In witness whereof I have hereunto set my hand and seal, this [insert the date] day of

Signed, sealed and delivered by the said [master's name].
(L.S.)

In the presence of [name of consular officer or Vice-Admiralty Judge, and of the office he fills].

17 & 18 VICT. c. 120.

An Act to repeal certain Acts and Parts of Acts relating to Merchant Shipping, and to continue certain Provisions in the said Acts.
[11th August, 1854.]

WHEREAS by "The Merchant Shipping Act, 1854," the acts relating to merchant shipping are amended and consolidated, and it is expedient to repeal certain acts and parts of acts relating to merchant shipping, and to make temporary provisions with respect to certain of the matters referred to in the said acts : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Preliminary.

1. This act may be cited for all purposes as "The Merchant Shipping Repeal Act, 1854."

Interpretation of terms in this act.

2. In the construction and for the purposes of this act the interpretation of terms contained in "The Merchant Shipping Act, 1854," shall be considered as incorporated with and forming part of this act.

Commencement of act.

3. With the exception of such provisions of this act as are hereinafter expressly stated to be intended to come into operation immediately after the passing thereof, this act shall come into operation at the same time as the Merchant Shipping Act, 1854.

Repeal of acts mentioned in schedule.

4. There shall be hereby repealed—

The several acts and parts of acts set forth in the first schedule hereto, to the extent to which such acts or parts of acts are therein expressed to be repealed, and all such provisions of any other acts or of any charters, and all such laws, customs and rules as are inconsistent with the provisions of the Merchant Shipping Act, 1854 :

Provided that such repeal shall not affect—

- (1.) Any provisions contained in the act of the seventh year of his late Majesty King William the Fourth, chapter seventy-nine, as to title, application of purchase money or borrowing money, and having relation to the power of purchasing lighthouses given to the Trinity House by the same act :
- (2.) Any security duly given before this act comes into operation :
- (3.) Any thing duly done before this act comes into operation :
- (4.) Any liability accruing before this act comes into operation :
- (5.) Any penalty, forfeiture or other punishment incurred or to be incurred in respect of any offence committed before this act comes into operation :
- (6.) The institution of any investigation or legal proceeding or any other remedy for ascertaining, enforcing or recovering any such liability, penalty, forfeiture or punishment as aforesaid :
- (7.) Any appointment, byelaw, regulation or licence duly made or granted under any enactment hereby repealed, and subsisting at the time when this act comes into operation ; and the same shall continue in force, but shall be subject to such provisions of the Merchant Shipping Act, 1854, as are applicable thereto respectively.

Continuation of Local Marine Boards.

5. The local marine boards, the members of which have been appointed or elected under the Mercantile Marine Act, 1850, shall continue to act until the fourth day of February, one thousand eight hundred and fifty-seven, or until other boards have been constituted in lieu thereof in pursuance of the provisions of the Merchant Shipping Act, 1854.

Construction of sections 4 and 9 of the Pilotage Law Amendment Act, 1853.

6. The fourth and ninth sections of "The Pilotage Law Amendment Act, 1853," shall be construed as if the fifth part of "The Merchant Shipping Act, 1854," were therein referred to, in lieu of the act of the sixth year of King George the Fourth, chapter one hundred and twenty-five.

Expenses of life boats, &c. may be charged on Mercantile Marine Fund.

7. The Board of Trade may, out of the Mercantile Marine Fund, direct payment to be made of such expenses for establishing and maintaining on the coasts of the United Kingdom proper life boats, with the necessary crews and equipments, and for affording assistance towards the preservation of life and property in cases of shipwreck and distress at sea, and for the granting rewards for the preservation of life in such cases, as it thinks fit; and this section shall come into operation immediately after the passing of this act.

Existing liabilities on Mercantile Marine Fund continued.

8. Nothing in the Merchant Shipping Act, 1854, or in this act, contained shall operate to prevent the exercise of the powers contained in the twelfth and sixteenth sections of the Merchant Shipping Law Amendment Act, 1853, of paying the debts, liabilities and expenses therein mentioned out of the Mercantile Marine Fund: And whereas it was arranged that a sum to be ascertained by the calculation of actuaries should before the said last-mentioned act came into operation be paid by the Trinity House out of the cash balances then in their hands for the purpose of supplying a deficiency in the funds of the Cinque Ports pilots, and of indemnifying the funds of the Trinity House pilots against any loss consequent upon the settlements to be made under the Pilotage Law Amendment Act, 1853: And whereas when the Merchant Shipping Law Amendment Act, 1853, came into operation, the said calculation was not completed: Be it enacted, that such payment may, with the consent of the Board of Trade, be made by the Trinity House in the same manner as payment of the debts, liabilities and expenses referred to in the said twelfth section of the said last-mentioned act; and this section shall come into operation immediately after the passing of this act.

Provision as to wages, &c. received before 1852.

13 & 14 Vict. c. 102, s. 31.

9. All monies arising from any wages and effects of deceased seamen or apprentices to the sea service which were received before the first day of January, one thousand eight hundred and fifty-two, shall be applied in the same manner as if the same had been received under the provisions of "The Merchant Shipping Act, 1854."

Receiver-general to conform to directions of Board of Trade.

10. The receiver-general of droits of Admiralty shall, as to all things to be done by him in virtue of his office, conform to all lawful directions given for that purpose by the Board of Trade; and on a vacancy occurring in his office no successor shall be appointed, but thereupon all powers and privileges vested in such receiver-general shall be transferred to the Board of Trade; and this section shall come into operation immediately after the passing of this act.

Powers of Board of Trade as to appointment of receivers.

11. Receivers appointed by the said receiver-general under the act of the tenth year of the reign of her present Majesty, chapter ninety-nine, shall hold their offices only during the pleasure of the Board of Trade; and the serjeants of the Admiralty of the Cinque Ports, their deputies or other officers, authorized to perform the duties and to exercise the powers within the jurisdiction of the Cinque Ports elsewhere performed and exercised by such receivers as aforesaid, shall perform and exercise the same only during the pleasure and subject to the directions of the Board of Trade; and all such receivers, serjeants, deputies and other officers as aforesaid shall possess in the several districts within which they have hitherto exercised their duties the same powers, rights and privileges, and perform the same duties, as are by the said Merchant Shipping Act, 1854, vested in and committed to the receivers therein mentioned, save only that they shall

not be entitled to take the command in cases of ships or boats stranded or in distress, unless authorized so to do by the Board of Trade.

12. There shall be payable to such receivers, serjeants, deputies and other officers as aforesaid such fees and other remuneration as are by the said Merchant Shipping Act, 1854, made payable to receivers appointed thereunder, and payment thereof shall be made by the same persons and in the same manner, and shall be capable of being enforced by the same means, as payment of the fees or other remuneration payable to the receivers appointed under "The Merchant Shipping Act, 1854," are payable or capable of being enforced, or as near thereto as circumstances permit; and, save as aforesaid, and saving also any expenses actually and properly incurred, no such receiver, serjeant, deputy or other officer as aforesaid shall be entitled to demand or receive from any person any fees or other sums in respect of any services performed by him as receiver, and this section shall come into operation immediately after the passing of this act.

Payment of receivers.

13. All fees or other remuneration received by any such receiver, serjeant, deputy or other officer as aforesaid may be applied by him to his own use.

Application of fees.

14. The provisions contained in the ninth part of "The Merchant Shipping Act, 1854," shall come into operation at the same time as if the same were herein repeated, and were hereby expressed to be intended to come into operation immediately after the passing of this act; and the following acts, that is to say, the act of the seventh year of King George the Second, chapter fifteen, the act of the twenty-sixth year of King George the Third, chapter eighty-six, and the act of the fifty-third year of King George the Third, chapter one hundred and fifty-nine, shall be considered as repealed immediately after the passing of this act.

Ninth Part of Merchant Shipping Act, 1854, to come into operation immediately.

15. All criminal proceedings under "The Seamen's Fund Winding-up Act, 1851," "The Pilotage Law Amendment Act, 1853," "The Merchant Shipping Law Amendment Act, 1853," or this act, shall be carried on in the same manner as similar proceedings under "The Merchant Shipping Act, 1854;" and all rules of law, practice and evidence which are applicable to such last mentioned proceedings shall be applicable to criminal proceedings under this act.

Mode of procedure in criminal cases.

16. If a native of any country in Asia, Africa or of any of the islands in the South Sea or the Pacific Ocean, or of any other country not having any consul in the United Kingdom, is brought to the United Kingdom in any ship, British or foreign, as a seaman, and is left in the United Kingdom, and within six months of his being so left becomes chargeable upon the poor rate, or commits any act by reason of the committal whereof he is liable to be convicted as an idle and disorderly person, or any other act of vagrancy, the master or owner of the said ship, or in case of a foreign ship the person who is consignee of the ship at the time of the seaman being so left as aforesaid, shall incur a penalty not exceeding thirty pounds, unless he can show that the person so left as aforesaid quitted the ship without the consent of the master, or that due means have been afforded by such master, owner or consignee, or one of them, to such person, of returning to his native country, or to the country in which he was shipped; and the Court inflicting such penalty may order the whole or any part of such penalty to be applied towards the relief or sending home of such person.

Penalty on masters of ships leaving certain seamen in distress in this country.

SCHEDULE to which this Act refers.

Acts and PARTS of ACTS to be repealed.

Reference to Act.	Title of Act.	Extent of Repeal.
8 Eliz. c. 13 ..	An Act touching Sea Marks and Mariners.. ..	The whole act, except section 5.
12 Anne, stat. 2, c. 18.	An Act for the preserving all such Ships and Goods thereof which shall happen to be forced on Shore or stranded on the Coasts of this Kingdom or on any other of her Majesty's Dominions.	So much as is not already repealed.
4 Geo. 1, c. 12 ..	An Act for enforcing and making perpetual an Act of the Twelfth Year of her late Majesty, intituled "An Act for the preserving all such Ships and Goods thereof which shall happen to be forced on Shore or stranded upon the Coasts of this Kingdom or any other of her Majesty's Dominions;" and for inflicting the punishment of Death on such as shall wilfully burn or destroy Ships.	So much as is not already repealed.
7 Geo. 2, c. 15 ..	An Act to settle how far Owners of Ships shall be answerable for the Acts of the Master or Mariners.	The whole act.
20 Geo. 2, c. 38 ..	An Act for the Relief and Support of maimed disabled Seamen, and the Widows and Children of such as shall be killed, slain or drowned in the Merchant Service.	So much as is not already repealed.
26 Geo. 2, c. 19 ..	An Act for enforcing the Laws against Persons who shall steal or detain shipwrecked goods, and for the Relief of Persons suffering Losses thereby.	So much as is not already repealed.
26 Geo. 3, c. 86 ..	An Act to explain and amend an Act made in the Seventh Year of his late Majesty's Reign, intituled "An Act to settle how far Owners of Ships shall be answerable for the Acts of the Masters or Mariners;" and for giving a further Relief to the Owners of Ships.	The whole act.
26 Geo. 3, c. 101..	An Act for erecting certain Lighthouses in the Northern Parts of Great Britain.	The whole act.
28 Geo. 3, c. 25 ..	An Act to render more effectual an Act passed in the Twenty-sixth year of his present Majesty's Reign, intituled "An Act for erecting certain Lighthouses in the Northern Parts of Great Britain.	The whole act.
29 Geo. 3, c. 52 ..	An Act to give further Powers to the Commissioners for erecting certain Lighthouses in the Northern Parts of Great Britain.	The whole act.
38 Geo. 3, c. 57 (local and personal).	An Act for incorporating the Commissioners appointed for erecting certain Lighthouses in the Northern Parts of Great Britain.	The whole act.
46 Geo. 3, c. 106..	An Act to provide for the better Execution of the several Acts relating to the Revenues, Matters and Things under the Management of the Commissioners of Customs and Port Duties, and of the Commissioners of Inland Excise and Taxes in Ireland.	Sections 75 and 76.

Reference to Act.	Title of Act.	Extent of Repeal.
46 Geo. 3, c. 132..	An Act for erecting a Lighthouse on the Bell or Cape Rock on the Eastern Coast of Scotland, and for enabling the Commissioners of the Treasury to advance a certain Sum of Money out of the Consolidated Fund of Great Britain towards that Purpose.	The whole act.
48 Geo. 3, c. 130..	An Act for preventing the various Frauds and Depredations committed on Merchants, Shipowners and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports, and also for remedying certain Defects relative to the Adjustment of Salvage under a Statute made in the Twelfth Year of the Reign of her late Majesty Queen Anne.	The whole act.
50 Geo. 3, c. 95 ..	An Act to enable the Corporation for preserving and improving the Port of Dublin to erect, repair and maintain Lighthouses round the Coast of Ireland, and to raise a Fund for defraying the Charge thereof.	The whole act.
51 Geo. 3, c. 66 ..	An Act to amend and render more effectual several Acts for promoting the Trade of Dublin, by rendering its Port and Harbour more commodious, and for erecting, repairing and maintaining Lighthouses round the Coast of Ireland, and to raise a Fund for defraying the Charge thereof.	The whole act, so far as relates to Lighthouses and Light Dues.
52 Geo. 3, c. 115..	An Act to make more effectual Provision for enabling the Corporation for preserving and improving the Port of Dublin to erect, repair and maintain Lighthouses and Lights round the Coasts of Ireland, and to raise a Fund for defraying the Charge thereof.	The whole act.
53 Geo. 3, c. 159..	An Act to limit the Responsibility of Shipowners in certain Cases.	The whole act.
54 Geo. 3, c. 136..	An Act for enabling the Commissioners of the Northern Lighthouses to purchase the Island and Light of May at the Entrance of the Frith of Forth, for enabling the Commissioners of the Treasury to advance a certain Sum of Money towards that purpose, and for amending several Acts in regard to the Northern Lighthouses.	The whole act.
55 Geo. 3, c. lxxvii. (local and personal.)	An Act for enabling the Commissioners of the Northern Lighthouses to erect Lighthouses on the Isles of Man and Calf of Man.	The whole act.
59 Geo. 3, c. 12 ..	An Act to amend the Laws for the Relief of the Poor.	Section 32.
1 & 2 Geo. 4, c. 76	An Act to continue and amend certain Acts for preventing the various Frauds and Depredations committed on Merchants, Shipowners and Underwriters, by Boatmen and others, within the Jurisdiction of the Cinque Ports, and also for remedying certain Defects relative to the Adjustment of Salvage under a Statute made in the Twelfth Year of the Reign of her late Majesty Queen Anne.	The whole act, except Sections 1, 2, 3, 4, 5, 15, 16 and 18.
4 Geo. 4, c. 88 ..	An Act for regulating Vessels carrying Passengers between Great Britain and Ireland.	The whole act.
6 Geo. 4, c. 125 ..	An Act for the Amendment of the Law respecting Pilots and Pilotage, and also for the better Preservation of Floating Lights, Buoys and Beacons.	The whole act.

Reference to Act.	Title of Act.	Extent of Repeal.
9 Geo. 4, c. 86 ..	An Act to amend an Act for the Amendment of the Law respecting Pilots and Pilotage, and also for the better Preservation of Floating Lights, Buoys and Beacons.	The whole act.
11 Geo. 4, c. 20 ..	An Act to amend and consolidate the Laws relating to the Pay of the Royal Navy.	Section 82.
4 & 5 Will. 4, c. 52	An Act to amend an Act of the Twentieth Year of his Majesty King George the Second for the Relief and Support of sick, maimed and disabled Seamen, and the Widows and Children of such as shall be killed, slain or drowned in the Merchant Service, and for other Purposes.	So much as is not already repealed.
5 & 6 Will. 4, c. 19	An Act to amend and consolidate the Laws relating to the Merchant Seamen of the United Kingdom, and for forming and maintaining a Register of all the Men engaged in that Service.	So much as is not already repealed.
6 & 7 Will. 4, c. 79	An Act for vesting Lighthouses, Lights and Sea Marks on the Coasts of England in the Corporation of Trinity House of Deptford Strond; and for making Provisions respecting Lighthouses, Lights, Buoys and Beacons, and Sea Marks, and the Tolls and Duties payable in respect thereof.	The whole act.
1 & 2 Vict. c. 66..	An Act for maintaining a Lighthouse at Gibraltar, and respecting Lighthouses not within the United Kingdom.	The whole act.
3 & 4 Vict. c. 68..	An Act to enable her Majesty in Council to authorize Ships and Vessels belonging to Countries having Treaties of Reciprocity with the United Kingdom to be piloted, in certain Cases, without having a licensed Pilot on board; and also to regulate the Mode in which Pilot Boats shall be painted and distinguished.	The whole act.
7 & 8 Vict. c. 112.	An Act to amend and consolidate the Laws relating to Merchant Seamen; and for keeping a Register of Seamen.	The whole act.
8 & 9 Vict. c. 86..	An Act for the General Regulation of the Customs.	Sections 45, 51, 53 and 140.
8 & 9 Vict. c. 87..	An Act for the Prevention of Smuggling	Section 10.
8 & 9 Vict. c. 89..	An Act for the registering of British Vessels ..	The whole act.
8 & 9 Vict. c. 116.	An Act for the Protection of Seamen entering on board Merchant Ships.	The whole act.
9 & 10 Vict. c. 99.	An Act for consolidating and amending the Laws relating to Wreck and Salvage.	The whole act.
12 & 13 Vict. c. 29.	An Act to amend the Laws in force for the Encouragement of British Shipping and Navigation.	The whole act.
12 & 13 Vict. c. 88.	An Act to amend the Laws relating to Pilotage ..	The whole act.
13 & 14 Vict. c. 93.	An Act for improving the Condition of Masters, Mates and Seamen, and maintaining Discipline in the Merchant Service.	The whole act.
13 & 14 Vict. c. 96.	An Act to amend the Laws relating to the Customs	Section 14.
14 & 15 Vict. c. 35.	An Act to extend the Benefits of certain Provisions of the General Merchant Seamen's Act relating to Apprentices bound to the Sea Service by Boards of Guardians of the Poor in Ireland, and to enable such Guardians to place out Boys in the Naval Service.	The whole act, except section 10.

Reference to Act.	Title of Act.	Extent of Repeal.
14 & 15 Vict. c. 79.	An Act to consolidate and amend the Laws relating to the Regulation of Steam Navigation, and to the Boats and Lights to be carried by Sea-going Vessels.	The whole act.
14 & 15 Vict. c. 96.	An Act to amend the Mercantile Marine Act, 1850.	The whole act.
14 & 15 Vict. c. 102.	An Act to amend the Acts relating to the Merchant Seamen's Fund, and to provide for winding up the said Fund, and for the better Management thereof in the meantime.	Sections 29, 30, 31, 32, 33, 34, 35, 36, 37, 38 and 61.
16 & 17 Vict. c. 129.	An Act further to amend the Law relating to Pilotage.	The whole act, except sections 3, 4, 5, 8, 10, 11, 12, 13, and so much of section 9 as relates to the recovery of Pilotage rates by Cinque Ports pilots licensed before the act came into operation.
16 & 17 Vict. c. 131.	An Act to amend various Laws relating to Merchant Shipping.	The whole act, except sections 12, 13, 24, 28 and 29.
17 & 18 Vict. c. 5.	An Act to admit Foreign Ships to the Coasting Trade.	Section 4.

18 & 19 VICT. c. 91.

An Act to facilitate the Erection and Maintenance of Colonial Lighthouses, and otherwise to amend the Merchant Shipping Act, 1854.
[14th August, 1855.]

WHEREAS it is expedient to make provision for facilitating the erection and maintenance of lighthouses in the British possessions abroad, and otherwise to amend the Merchant Shipping Act, 1854: Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This act may be cited as "The Merchant Shipping Act Amendment Act, 1855," and shall be taken to be part of the Merchant Shipping Act, 1854, and shall be construed accordingly.

Short title of act.
17 & 18 Vict.
c. 104.

2. In any case in which any lighthouse, buoy or beacon has been or is hereafter erected or placed on or near the coasts of any British possession, by or with the consent of the legislative authority of such possession, her Majesty may, by order in council, fix such dues in respect thereof, to be paid by the owner or master of every ship which passes the same or derives benefit therefrom, as her Majesty may deem reasonable, and may in like manner from time to time increase, diminish or repeal such dues, and from the time specified in such order for the commencement of the dues thereby fixed, increased or diminished the same shall be leviable throughout her Majesty's dominions in manner hereinafter mentioned.

Colonial Lighthouses.

Her Majesty may by order in council fix dues for colonial lighthouses.

3. No such dues as aforesaid shall be levied in any colony unless and until the legislative authority in such colony has, either by address to the

No such dues to be levied in any colony without

the consent
of the colonial
legislature.

crown, or by an act or ordinance duly passed, signified its opinion that the same ought to be levied in such colony.

Mode of collect-
ing the said dues.
17 & 18 Vict.
c. 104, ss. 399,
400, 401.

4. The said dues shall in the United Kingdom be collected by the same persons by whom, and by the same means, in the same manner, and subject to the same conditions, so far as circumstances permit, by, in and subject to which the light dues leviable under the Merchant Shipping Act, 1854, are collected, and shall in each British possession abroad be collected by such persons as the governor of such possession abroad may appoint for the purpose, and shall be collected by the same means, in the same manner and subject to the same conditions, so far as circumstances permit, by, in and subject to which the light dues leviable under the Merchant Shipping Act, 1854, are paid and collected, or by such other means, in such other manner, and subject to such other conditions as the legislative authority in such possession may direct.

Dues to be paid
over to her Ma-
jesty's Paymaster
General.

5. All dues levied under this act shall be paid over to her Majesty's Paymaster General at such times and in such manner as the Board of Trade may direct, and shall be applied, paid and dealt with by him, for the purposes hereinafter mentioned, in such manner as such Board may direct.

Dues to be ap-
plied to expenses
of lighthouse,
&c. for which
they are levied.

6. The dues levied under the authority of this act in respect of any such lighthouse, buoy or beacon as aforesaid shall, after deducting any expenses incurred in collecting the same, be applied for the purpose of paying the expenses incurred in erecting and maintaining such lighthouse, buoy or beacon, and for no other purpose whatever.

Power to borrow
money on secu-
rity of dues.
17 & 18 Vict.
c. 104, ss. 424,
425, 426.

7. For the purpose of constructing or repairing any such lighthouse, buoy or beacon as aforesaid, the Board of Trade may raise, upon the security of the dues to be levied in respect thereof, such sums of money as they may deem fit; and the Commissioners of her Majesty's Treasury, out of any monies which may be provided by Parliament, the Public Works Loan Commissioners or any other person or body of persons, may advance the same accordingly, such advances to be made in the same manner, with the same powers and subject to the same provisions, so far as circumstances permit, in, with and subject to which, under the Merchant Shipping Act, 1854, advances may be made upon the security of the Mercantile Marine Fund for the construction and repair of lighthouses in the United Kingdom.

Accounts for
each lighthouse,
&c. to be kept,
and laid before
Parliament, and
to be audited.
17 & 18 Vict.
c. 104, s. 428.

8. Accounts shall be kept of all sums expended in the construction, repair or maintenance of every lighthouse, buoy or beacon in the British possessions abroad for which dues are levied under the authority of this act, and of the dues received in respect thereof, in such manner as the Board of Trade may direct, and shall be laid before Parliament annually; and the said accounts shall be audited in such manner as her Majesty may by order in council direct.

*Registry of
Ships.*

Part II. of Mer-
chant Shipping
Act, 1854.

Penalty on false
declarations
under Part II. of
Merchant Ship-
ping Act.
17 & 18 Vict.
c. 104, s. 103.

9. Any person who, in any declaration made in the presence of or produced to any registrar of shipping, in pursuance of the second part of the Merchant Shipping Act, 1854, or in any documents or other evidence produced to such registrar, wilfully makes, or assists in making or procures to be made, any false statement concerning the title to or the ownership of or the interests existing in any ship, or any share or shares in any ship, or who utters, produces or makes use of any declaration or document containing any such false statement, knowing the same to be false, shall be guilty of a misdemeanor.

Shares in ship-
ping within the
Trustee Act,
1850.
13 & 14 Vict. c. 60.

10. Shares in ships registered under the said Merchant Shipping Act, 1854, shall be deemed to be included in the word "stock," as defined by

the Trustee Act, 1850, and the provisions of such last-mentioned act shall be applicable to such shares accordingly.

11. In any case in which any bill of sale, mortgage or other instrument for the disposal or transfer of any ship or any share or shares therein or of any interest therein is made in any form or contains any particulars other than the form and particulars prescribed and approved for the purpose by or in pursuance of the Merchant Shipping Act, 1854, no registrar shall be required to record the same without the express direction of the Commissioners of her Majesty's Customs.

Forms of instruments.
17 & 18 Vict.
c. 104, s. 96.

12. Upon the transfer of the registry of a ship from one port to another, the certificate of registry required by the ninetieth section of the Merchant Shipping Act, 1854, to be delivered up for that purpose, may be delivered up to the registrar of either of such ports.

Delivery of certificate upon transfer of registry.
17 & 18 Vict.
c. 104, s. 90.

13. The Commissioners of Customs may, with the consent of the Board of Trade, exempt any pleasure yacht from the provision contained in the thirty-fourth section of the Merchant Shipping Act, 1854, which requires the name of every ship and the port to which she belongs to be painted on her stern.

Exemption of certain ships from having name painted on stern.
17 & 18 Vict.
c. 104, s. 34.

14. The owner of any ship which is measured under Rule II. contained in the twenty-second section of the Merchant Shipping Act, 1854, may at any subsequent period apply to the Commissioners of Customs to have the said ship remeasured under Rule I. contained in the twenty-first section of the same act, and the said commissioners may thereupon, and upon payment of such fee not exceeding seven shillings and sixpence for each transverse section as they may authorize, direct the said ship to be remeasured accordingly, and the number denoting the register tonnage shall be altered accordingly.

Ships measured under Rule II. may be measured under Rule I.
17 & 18 Vict.
c. 104, ss. 21 and 22.

15. The copy or transcript of the register of any British ship which is kept by the chief registrar of shipping at the Custom House in London, or by the registrar-general of seamen, under the direction of her Majesty's Commissioners of Customs or of the Board of Trade, shall have the same effect to all intents and purposes as the original register of which the same is a copy or transcript.

General register books in London.
17 & 18 Vict.
c. 104, s. 107.

16. The Board of Trade may issue instructions concerning the relief to be administered to distressed seamen and apprentices, in pursuance of the two hundred and eleventh and two hundred and twelfth sections of the Merchant Shipping Act, 1854, and may by such instructions determine in what cases and under what circumstances and conditions such relief is to be administered; and all powers of recovering expenses incurred with respect to distressed seamen and apprentices, which by the two hundred and thirteenth section of the said act are given to the Board of Trade, shall extend to all expenses incurred by any foreign government for the purposes aforesaid, and repaid to such government by her Majesty's government, and shall likewise extend to any expenses incurred by the conveying home such seamen or apprentices in foreign as well as British ships; and all provisions concerning the relief of distressed seamen and apprentices, being subjects of her Majesty, which are contained in the said sections of the said act, and in this section, shall extend to such seamen and apprentices, not being subjects of her Majesty, as are reduced to distress in foreign parts by reason of their having been shipwrecked, discharged or left behind from any British ship; subject nevertheless to such modifications and directions concerning the cases in which relief is to be given to such foreigners, and the country to which they are to be sent, as the Board of Trade may, under the circumstances, think fit to make and issue.

Masters and Seamen.

Part III. of Merchant Shipping Act, 1854.

Extension of provisions concerning the relief of destitute seamen.
17 & 18 Vict.
c. 104, ss. 211, 212 and 213.

Enactment concerning savings banks extended to seamen in the navy.

17 & 18 Vict.
c. 104, s. 180.

Additional powers of Naval Courts.

17 & 18 Vict.
c. 104, ss. 260 to 266.

Wrecks, Casualties and Salvage.

Part VIII. of Merchant Shipping Act, 1854.

In case of wreck of foreign ships, consul-general to be deemed agent of owner.

Remuneration for services by coast guard.

Legal Procedure.

Part X. of Merchant Shipping Act, 1854.

Jurisdiction in case of offences on board ship.
12 & 13 Vict.
c. 96.

17. The enactment of the Merchant Shipping Act, 1854, relating to savings banks shall apply to all seamen, and to their wives and families, whether such seamen belong to the royal navy or to the merchant service, or to any other sea service.

18. Any naval Court summoned, under the provisions of the Merchant Shipping Act, 1854, to hear any complaint touching the conduct of the master or any of the crew of any ship, shall, in addition to the powers given to it by the said act, have power to try the said master or any of the said crew for any offences against the Merchant Shipping Act, 1854, in respect of which two justices would, if the case were tried in the United Kingdom, have power to convict summarily, and by order duly made to inflict the same punishments for such offences which two justices might in the case aforesaid inflict upon summary conviction; provided, that in cases where an offender is sentenced to imprisonment the sentence shall be confirmed in writing by the senior naval or consular officer present at the place where the Court is held, and the place of imprisonment, whether on land or on board ship, shall be approved by him as a proper place for the purpose, and copies of all sentences made by any naval Court summoned to hear any such complaint as aforesaid shall be sent to the commander-in-chief or senior naval officer of the station.

19. Whenever any articles belonging to or forming part of any foreign ship which has been wrecked on or near the coasts of the United Kingdom, or belonging to or forming part of the cargo thereof, are found on or near such coasts, or are brought into any port in the United Kingdom, the consul-general of the country to which such ship, or, in the case of cargo, to which the owners of such cargo, may have belonged, or any consular officer of such country authorized in that behalf by any treaty or agreement with such country, shall, in the absence of the owner of such ship or articles, and of the master or other agent of the owner, be deemed to be the agent of the owner, so far as relates to the custody and disposal of such articles.

20. In cases where services are rendered by officers or men of the coast guard service in watching or protecting shipwrecked property, then, unless it can be shown that such services have been declined by the owner of such property or his agent at the time they were tendered, or that salvage has been claimed and awarded for such services, the owner of the shipwrecked property shall pay in respect of the said services remuneration according to a scale to be fixed by the Board of Trade, so however that such scale shall not exceed any scale by which payment to officers and men of the coast guard for extra duties in the ordinary service of the Commissioners of Customs is for the time being regulated; and such remuneration shall be recoverable by the same means and shall be paid to the same persons and accounted for and applied in the same manner as fees received by receivers appointed under the Merchant Shipping Act, 1854.

21. If any person, being a British subject, charged with having committed any crime or offence on board any British ship on the high seas or in any foreign port or harbour, or if any person, not being a British subject, charged with having committed any crime or offence on board any British ship on the high seas, is found within the jurisdiction of any Court of justice in her Majesty's dominions which would have had cognizance of such crime or offence if committed within the limits of its ordinary jurisdiction, such Court shall have jurisdiction to hear and try the case as if such crime or offence had been committed within such limits: provided, that nothing contained in this section shall be construed to alter or interfere with the act of the thirteenth year of her present Majesty, chapter ninety-six.

22. It shall be the duty of the East India Company to take charge of and send home or otherwise provide for all persons, being Lascars or other natives of the territories under the government of the said company, who are found destitute in the United Kingdom; and if any such person is relieved and maintained by any guardians, overseers, or other persons administering the relief of the poor, such overseers, guardians or other persons may, by letter sent through the post or otherwise, give notice thereof in writing to the secretary of the Court of Directors of the East India Company, specifying, so far as is practicable, the following particulars; viz.,—

- (1.) The name of the person so relieved or maintained :
- (2.) The presidency or district or part of the territories of the East India Company of which he professes to be a native :
- (3.) The name of the ship in which he was brought to the United Kingdom :
- (4.) The port or place abroad from which such ship sailed, and the port or place in the United Kingdom at which such ship arrived, when he was so brought to the United Kingdom, and the time of such arrival :

And the said East India Company shall repay to the said overseers, guardians or other persons, out of the revenues of the said company, all monies duly expended by them in relieving or maintaining such destitute person, after the time at which such notice aforesaid is sent or otherwise given.

23. It shall be lawful for any master or owner of a ship or his agent to enter into agreements with Lascars or natives of the territories of the East India Company, binding them to proceed to any port or ports in the United Kingdom, either as seamen or as passengers, and there to enter into a further agreement to serve as seamen in any ship which may happen to be there, and to be bound to any port in the territories of the East India Company; provided, that every such original agreement shall be made in such form, and shall contain such provisions, and shall be executed in such manner, and under such conditions for securing the return of such Lascars or natives to their own country, and for other purposes, as the Governor General of India in council, or the governors of the respective presidencies in which the original agreement is made, in council may direct; and if any Lascar or other person who has bound himself by any such original agreement is, on arriving in the United Kingdom, required to enter into a further agreement to serve as a seaman in any ship bound to any port in the territories of the East India Company, and if it is certified by some officer appointed for that purpose by the East India Company that such further agreement is a proper agreement in all respects for such Lascar or other person to enter into, and is in accordance with the original agreement, and that the ship to which such further agreement relates is in all respects a proper ship for such Lascar or other person to serve in, and that there is not, in the opinion of such officer, any objection to the full performance of the said original agreement, such Lascar or other person shall be deemed to be engaged under such further agreement, and to serve as a seaman in the ship to which it relates, and shall thereupon be deemed to be for all purposes one of the crew of the ship; and for every Lascar or other person in respect of whom such certificate is applied for, the person applying for the same shall pay to such officer as aforesaid such fee as the East India Company may appoint, not exceeding ten shillings.

Miscellaneous.

Part XI. of Merchant Shipping Act, 1854.

Relief of destitute Lascars.

Contracts may be made with natives in India, under certain conditions, binding them to go to the United Kingdom, and then to serve in other ships back to India or elsewhere.

24. Nothing herein contained shall be deemed to repeal or affect any provisions contained in the twenty-fifth, twenty-sixth, twenty-seventh, twenty-eighth, twenty-ninth, thirtieth, thirty-first or thirty-fourth sections of the act of the fourth year of King George the Fourth, chapter eighty, or in the sixteenth section of the act of the eighteenth year of her present Majesty, chapter one hundred and twenty.

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Saving of former enactments.

4 Geo. 4, c. 80, ss. 25 to 34, 17 & 18 Vict. c. 120, s. 16.

18 & 19 VICT. c. 111.

An Act to amend the Law relating to Bills of Lading.

[14th August, 1855.]

WHEREAS by the custom of merchants a bill of lading of goods being transferable by endorsement the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the bill of lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property : and whereas it frequently happens that the goods in respect of which bills of lading purport to be signed have not been laden on board, and it is proper that such bills of lading in the hands of a *bonâ fide* holder for value should not be questioned by the master or other person signing the same on the ground of the goods not having been laden as aforesaid : Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Rights under bills of lading to vest in consignee or endorsee.

1. Every consignee of goods named in a bill of lading, and every endorsee of a bill of lading to whom the property in the goods therein mentioned shall pass, upon or by reason of such consignment or endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities in respect of such goods as if the contract contained in the bill of lading had been made with himself.

Not to affect right of stoppage in transitu or claims for freight.

2. Nothing herein contained shall prejudice or affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper or owner, or any liability of the consignee or endorsee, by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

Bill of lading in hands of consignee, &c. conclusive evidence of the shipment as against master, &c.

3. Every bill of lading in the hands of a consignee or endorsee for valuable consideration representing goods to have been shipped on board a vessel shall be conclusive evidence of such shipment as against the master or other person signing the same, notwithstanding that such goods or some part thereof may not have been so shipped, unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board : provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

Proviso.

18 & 19 VICT. c. 119.

An Act to amend the Law relating to the Carriage of Passengers by Sea.

[14th August, 1855.]

WHEREAS it is expedient to amend "The Passengers Act, 1852 : " Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

Prefatory Clauses.

Commencement of this act, and repeal of former

1. On the first day of October next, when this act shall commence and come into force, "The Passengers Act, 1852," shall be repealed ; except so

far as the said act repeals any former act or enactment ; and except as to existing passage brokers' licences, which shall continue in force as mentioned in section sixty-eight of this act, and except as to any ship which shall have cleared out from any colonial port under the said act, and before this act shall have come into operation in such colony ; and except so far as may be necessary for supporting or continuing any proceeding heretofore taken or hereafter to be taken upon any bond given under the said act, or upon any other civil process ; and except as to the recovery and application of any penalty for any offence committed against the said act before the commencement of this act ; and except also as to an order in council made by her Majesty, with the advice of her Privy Council, on the sixteenth day of October, one thousand eight hundred and fifty-two, in pursuance of the powers given by the fifty-fifth section of the said act, which said order in council shall remain in force until altered or revoked by any order in council to be made under the provisions of this act.

act, except as to existing liabilities, and except as to an Order in Council dated 16th Oct. 1852.

2. In citing this act in other acts of Parliament, or in any instrument, document or proceeding, it shall be sufficient to use the expression "The Passengers Act, 1855 ;" and in any process for enforcing the remedies or penalties given or imposed by this act, it shall be sufficient, without specifying more particularly the cause of complaint or offence, to refer by number, according to the copies of the act printed by the Queen's printer to the section or sections under which the proceeding is taken.

Short title of this act ; and in legal proceedings reference to sections of this act by number to be sufficient.

3. For the purposes of this act, the following words and expressions, whenever they occur, shall respectively have the following significations, if not inconsistent with the context or subject matter ; (that is to say,) words of one number or gender shall import both numbers and all genders respectively ; the expression "her Majesty" shall include her heirs and successors ; the expression "consular officer" shall signify and include her Majesty's consul general, consul and vice-consul ; the expression "United Kingdom" shall signify Great Britain and Ireland, and the islands of Guernsey, Jersey, Alderney, Sark, Scilly and Man ; the expression "North America" shall signify and include the Bermudas, and all ports and places on the eastern coast of the continent of North America, or in the islands adjacent or near thereto, or in the Gulf of Mexico north of the tropic of Cancer ; the expression "West Indies" shall signify the West India islands, the Bahamas, British Guiana and Honduras ; the expression "governor" shall signify the person who for the time being shall be lawfully administering the government of any British colony in which he may be acting ; the expression "statute adult" shall signify any person of the age of twelve years or upwards, or two persons between the ages of one and twelve years ; the expression "passage" shall include all passages except cabin passages ; the expression "passengers" shall include all passengers except cabin passengers ; and except labourers under indenture to the Hudson's Bay Company, and their families, conveyed in ships the property of or chartered by the said company, and no persons shall be deemed cabin passengers unless the space allotted to their exclusive use shall be in the proportion of at least thirty-six clear superficial feet to each statute adult, nor unless they shall be messed throughout the voyage at the same table with the master or first officer of the ship, nor unless the fare contracted to be paid by them respectively shall be in the proportion of at least thirty shillings for every week of the length of the voyage as computed under the provisions of this act for sailing vessels proceeding from the United Kingdom to any place south of the equator, and of twenty shillings for such vessels proceeding to any place north of the equator, nor unless they shall have been furnished with a duly signed contract ticket according to the form in schedule (K.) of this act ; the expression "upper passenger deck" shall signify and include the deck immediately beneath the upper deck, or the poop or round house and deck house when the number of passengers and cabin passengers carried

Definition of terms used in this act.

in such poop, round house or deck house shall exceed one-third of the total number of passengers which such ship can lawfully carry on the deck next below ; the expression "lower passenger deck," the deck next beneath the upper passenger deck, not being an orlop deck ; the expression "ship" shall signify any description of sea-going vessel, whether British or foreign ; the expression "passenger ship" shall signify every description of such ship carrying upon any voyage to which the provisions of this act shall extend more than thirty passengers, or a greater number of passengers than in the proportion of one statute adult to every fifty tons of the registered tonnage of such ship if propelled by sails, or of one statute adult to every twenty-five tons if propelled by steam ; the expression "master" shall signify the person who shall be borne on the ship's articles as master, or who, other than a pilot, shall for the time being be in charge or command of any such ship or "passenger ship ;" and the expression "emigrant runner" shall signify every person other than a licensed passage broker or his *bonâ fide* salaried clerk, who within any port or place of shipping, or within five miles of the outer boundaries thereof, for hire or reward, or the expectation thereof, shall directly or indirectly conduct, solicit, influence or recommend any intending emigrant to or on behalf of any passage broker, owner, charterer or master of a ship, lodging house or tavern or shop keeper, money changer or other dealer or chapman, for any purpose connected with the preparations or arrangements for a passage, or shall give or pretend to give to such intending emigrant any information or assistance in any way relating to emigration.

To what vessels
and voyages this
act extends.

4. This act shall extend to every "passenger ship" proceeding on any voyage from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, and on every colonial voyage as hereinafter described, and, in the particulars mentioned or referred to in sections one hundred, one hundred and one and one hundred and two, to every ship bringing passengers into the United Kingdom from any place out of Europe and not being within the Mediterranean Sea ; but shall not extend to any of her Majesty's ships of war, nor to any ships in the service of the commissioners for executing the office of Lord High Admiral of the United Kingdom, nor to any ship of war or transport in the service of the East India Company, nor to any steam-vessel regularly employed in the conveyance of the public mails under an existing contract with the government of the state or colony to which such steam-vessel may belong, provided the master thereof shall, on demand, produce to the emigration officer at the port of clearance or port of departure a certificate of exemption, in the form given in schedule (A.) hereto annexed, under the hand of the Postmaster-General of the United Kingdom, or of some person deputed by him for the purpose, or in the case of a colony, under the hand of the governor thereof, or in the case of a foreign state, under the hand of the postmaster-general or other competent government officer whose signature shall be authenticated by the signature of a British consular officer in such foreign state.

Penalty on
fraudulently
using certificates
or using fraudulent
certificates.

5. Such certificate of exemption shall be issuable at the discretion of the officer authorized to grant the same as hereinbefore mentioned, and shall remain in force for the period specified therein, unless sooner revoked, or unless the vessel for which it shall have been issued shall sooner cease to be employed in carrying the public mails ; and if any person shall make or attempt to make any fraudulent use of any such certificate, or shall forge, counterfeit, alter or erase the whole or any part thereof, or shall use or attempt to use any spurious or fraudulent certificate, the person so offending, and every person aiding and abetting in such offence, shall be liable to a penalty not exceeding five hundred pounds sterling, and the vessel for which the exemption is claimed shall not be cleared out until all the requirements of this act have been complied with.

6. And whereas by a warrant under her Majesty's sign manual, bearing date on the twenty-seventh day of November, one thousand eight hundred and forty-seven, her Majesty was pleased to appoint certain persons therein named, under the style of "The Colonial Land and Emigration Commissioners," to be, during her Majesty's pleasure, commissioners in the United Kingdom for the sale of the waste lands of the crown of her Majesty's colonies, and for superintending the emigration of the poorer classes of her Majesty's subjects to such colonies; and whereas it is expedient that such commissioners should be empowered to carry this act into execution: Be it therefore enacted, that the said commissioners, and their successors for the time being, shall and they are hereby empowered to carry this act into execution; and that for all legal and other purposes it shall be sufficient to describe such commissioners by the style of "The Emigration Commissioners."

Commissioners of emigration to carry this act into execution.

7. The said emigration commissioners for the time being may sue and be sued in the name of their secretary, or of any one of such commissioners for the time being, and legal or equitable proceedings taken by or against the said commissioners in the name of any one of them or of their secretary shall not abate nor be discontinued by the death or removal of such secretary or commissioner, but the secretary for the time being, or any one of such commissioners, shall always be deemed to be the plaintiff or defendant (as the case may be) in any such proceedings: Provided always, that the said commissioners and their secretary, and the emigration officers hereinafter mentioned respectively, shall in no case be personally liable, nor shall the private estate and effects of any of them be liable, for the payment of any monies or costs or otherwise in respect of any contract made or hereafter to be made by them or any of them, or in respect of any legal or equitable proceedings taken against them or any of them, or for any act, deed or matter done or executed by them or any of them in their or his official capacity and on the public service.

Emigration commissioners may sue and be sued in the name of their secretary, &c.

Commissioners, &c. exempt from liability.

8. In the United Kingdom the said commissioners acting under the sanction of one of her Majesty's principal secretaries of state, and in her Majesty's possessions abroad the respective governors thereof, may from time to time appoint, and the said commissioners and governors may at pleasure from time to time remove, such emigration officers and assistant emigration officers as they may respectively think necessary, for the purpose of carrying this act into execution, under the direction of the said commissioners or governors, as the case may be: Provided nevertheless, that all existing appointments of emigration officers or immigration agents and of their assistants, as well in the United Kingdom as in her Majesty's possessions abroad, shall continue in force under this act until duly revoked.

Emigration officers and assistants to act under the commissioners, &c. but existing appointments to continue until revoked.

9. All powers, functions and duties to be exercised or performed by any such emigration officer may be exercised and performed respectively by his assistant, or, at any port where there shall be no such emigration officer or assistant, or in their absence, by the chief officer of customs for the time being at such port.

Duties of emigration officer may be performed by his assistant or by officer of customs.

10. The master of every ship, whether a "passenger ship" or otherwise, fitted or intended for the carriage of passengers, or which shall carry passengers upon any voyage to which this act extends, shall afford to such emigration officer as aforesaid at any port or place in her Majesty's dominions, and, in the case of British ships, to her Majesty's consular officer at any foreign port or place at which such ship shall be or arrive, every facility for inspecting such ship, and for communicating with the passengers, and for ascertaining that the provisions of this act, so far as the same may be applicable to such ships, have been duly complied with; the master

Facilities to be given to the proper officers for the inspection of all ships fitting for passengers.

Penalty on mas-

ter failing to comply, &c.

Arrangements for the Ship.

No passenger ship to clear without certificate from emigration officer, nor until bond be given to the Crown.

Forfeiture of ship if master proceeds to sea without certificate of clearance, &c.

Such ship to be dealt with as if seized under laws relating to customs.

Where passengers may be carried.

Penalty.

Rule for determining the number of passengers to be carried.

Tonnage check.

Space check.

of any ship who shall omit or fail to comply with any of the requirements of this section shall be liable to a penalty not exceeding fifty pounds.

11. No ship fitted or intended for the carriage of passengers as a "passenger ship" shall clear out or proceed to sea until the master thereof shall have obtained from the emigration officer at the port of clearance a certificate of clearance under his hand that all the requirements of this act, so far as the same can be complied with, before the departure of such ship, have been duly complied with, and that such ship is, in his opinion, seaworthy, in safe trim, and in all respects fit for her intended voyage, and that her passengers and crew are in a fit state to proceed, nor until the master shall have joined in executing such bond to the Crown as required by the sixty-third section of this act: Provided, that if such emigration officer shall refuse to grant such certificate, and the owner or charterer of such ship shall appeal in writing to the emigration commissioners, such commissioners shall appoint any two other emigration officers, or any two competent persons, at the expense of the appellant, to examine into the matter, and if the persons so appointed shall grant a certificate under their joint hands to the purport hereinbefore required, such certificate shall be held to be of the same effect as if granted by the emigration officer of the port of clearance.

12. If any "passenger ship" shall clear out or proceed to sea without the master's having first obtained such certificate of clearance, or without his having joined in executing such bond, as by this act is required, or if such ship after having sailed shall put into any port or place in the United Kingdom in a damaged state, and shall put to sea again without the master having first obtained such certificate of clearance as required by section fifty of this act, such ship shall be forfeited to the use of her Majesty, and may be seized by any officer of customs, if found, within two years from the commission of the offence, in any port or place in her Majesty's dominions; and such ship shall thereupon be dealt with in the same manner as if she had been seized as forfeited under any of the laws relating to the customs for an offence incurring forfeiture under those laws.

13. No ship shall carry passengers or cabin passengers on more than two decks; provided, that cabin passengers in a proportion not exceeding one cabin passenger for every one hundred tons of the ship's registered tonnage, or sick persons placed in an hospital, as hereinafter provided, may be carried in a poop or deck house, notwithstanding that passengers are carried on two other decks, and if passengers are carried under the poop or in any round house or deck house, such poop, round house or deck house shall be properly built and secured to the satisfaction of the emigration officer at the port of clearance; for any breach of this enactment the master of the ship shall for each offence be liable to a penalty not exceeding five hundred pounds nor less than twenty pounds sterling.

14. For determining the number of passengers to be carried in any "passenger ship" the following rules shall be observed:

- (1.) No ship propelled by sails only shall carry a greater number of persons (including every individual on board) than in the proportion of one statute adult to every two tons of her registered tonnage:
- (2.) No ship shall carry under the poop, or in the round house or deck house, or on the "upper passenger deck," a greater number of passengers than in the proportion of one statute adult to every fifteen clear superficial feet of deck allotted to their use:
- (3.) No ship shall carry on her lower passenger deck a greater number of passengers than in the proportion of one statute adult to every eighteen clear superficial feet of deck allotted to their use: provided nevertheless, that if the height between such lower passenger deck and the deck immediately above it shall be less than seven feet, or

if the apertures (exclusive of side scuttles) through which light and air shall be admitted together to the lower passenger deck shall be less in size than in the proportion of three square feet to every one hundred superficial feet of the lower passenger deck, no greater number of passengers shall be carried on such deck than in the proportion of one statute adult to every twenty-five clear superficial feet thereof:

- (4.) No ship, whatever be her tonnage or superficial space of "passenger decks," shall carry a greater number of passengers on the whole than in the proportion of one statute adult to every five superficial feet, clear for exercise, on the upper deck or poop, or (if secured and fitted on the top with a railing or guard to the satisfaction of the emigration officer at the port of clearance) on any round house or deck house:
- (5.) In the measurement of the passenger decks, poop, round house or deck house, the space for the hospital and that occupied by such portion of the personal luggage of the passengers as the emigration officer may permit to be carried there shall be included:

If there shall be on board of any ship at or after the time of clearance a greater number, either of persons or passengers (except by births at sea), than in the proportions respectively hereinbefore mentioned, the master of such ship shall be liable to a penalty not exceeding twenty pounds nor less than five pounds sterling for each passenger or person constituting such excess. Penalty.

15. Provided nevertheless, that nothing in this act contained shall extend to repeal or vary an act passed in the session of Parliament holden in the sixteenth and seventeenth years of the reign of her present Majesty, chapter eighty-four, intituled "An Act to amend the Passengers Act, 1852, so far as relates to the Passages of Natives of Asia or Africa, and also Passages between the Island of Ceylon and certain Parts of the East Indies."

Nothing to extend to repeal 16 & 17 Vict. c. 84.

16. The master of every ship, whether a "passenger ship" or otherwise, carrying passengers on any voyage to which this act extends, shall, before demanding a clearance for such ship, sign two lists, made out according to the form contained in schedule (B.) hereto annexed, correctly setting forth in the manner therein directed the name and other particulars of the ship, and of every passenger on board thereof; and the said lists, when countersigned by the emigration officer, where there is one at the port, shall be delivered by the master to the officer of the customs from whom a clearance of the said ship shall be demanded, and such officer shall thereupon also countersign and return to the said master one of such lists, hereinafter called "The Master's List;" and the said master shall note in writing on such last-mentioned list, and on any additional lists to be made out as next hereinafter provided, the date and supposed cause of death of any passenger who may die, and the date of birth and sex of any child who may be born on the voyage, and shall exhibit such last-mentioned list, with any additions which may from time to time be made thereto, as hereinafter directed, to the chief officer of customs at any port or place in her Majesty's possessions, or to her Majesty's consular officer at any foreign port at which the said passengers or any of them shall be landed, and shall deposit the same with such chief officer of customs or such consular officer, as the case may be, at the final port or place of discharge, and such officer of customs or consular officer shall thereupon forthwith transmit the particulars respecting any passenger who may die, or of any child who may be born on the voyage, to the registrar-general of births, deaths and marriages in England, who shall file the same, and enter a copy thereof under his hand, in the "Marine Register Book," which entry shall be dealt with and be of the same value as evidence as any other entry made in such book under the provisions of an act passed in the session of Parliament held in the sixth and seventh years of the reign of her present Majesty, intituled "An Act for

Passengers' lists to be delivered in duplicate by the master before clearance.

6 & 7 W. 4, c. 86.

registering Births, Deaths and Marriages in England :” in case of noncompliance with any of the requirements of this section on the part of the master, or if such lists shall be wilfully false, the master shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than five pounds sterling.

Lists of passengers embarked after clearance to be delivered by master.

17. If at any time after such lists shall have been signed and delivered as aforesaid any additional passenger shall be taken on board, in every such case the master shall, according to the form aforesaid, add to “The Master’s List” the names and other particulars of every such additional passenger, and shall also sign a separate list, made out according to the form aforesaid, containing the names and other particulars of every such additional passenger, and such last-mentioned list, when countersigned by the emigration officer, where there is one at the port, shall, together with “The Master’s List” to which such addition shall have been made, be delivered to the chief officer of customs as aforesaid, and thereupon such officer shall countersign “The Master’s List,” and shall return the same to the said master, and shall retain the separate list, and so on in like manner whenever any additional passenger or passengers may be taken on board ; or if no officer of customs shall be stationed at the port or place where such additional passenger or passengers may be taken on board, the said lists shall be delivered to the officer of customs at the next port or place at which such vessel shall touch or arrive and where any such officer shall be stationed, to be dealt with as hereinbefore mentioned : provided, that when any additional passengers shall be taken on board the master shall obtain a fresh certificate from the emigration officer of the port that all the requirements of this act have been duly complied with before the ship shall proceed to sea : in case of noncompliance with any of the requirements of this section, the master of such ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Penalty on non-compliance.

Penalty on persons found on board ships without consent of owners, &c.

18. If any person shall be found on board any passenger ship with intent to obtain a passage therein without the consent of the owner, charterer or master thereof, such person, and every person aiding and abetting him in such fraudulent intent, shall respectively be liable to a penalty not exceeding five pounds, and in default of payment to imprisonment, with or without hard labour, for a period not exceeding three calendar months ; and such person so found on board may be taken before any justice of the peace, without warrant, and such justice may summarily hear the case, and on proof of the offence convict such offender as aforesaid.

All passenger ships to be surveyed before clearing out.

19. No “passenger ship” shall clear out or proceed to sea unless she shall have been surveyed, under the direction of the emigration officer at the port of clearance, but at the expense of the owner or charterer thereof, by two or more competent surveyors to be appointed by the said emigration commissioners for each port at which there may be an emigration officer, and for other ports by the Commissioners of Customs, nor unless it shall be reported by such surveyors that such “passenger ship” is in their opinion seaworthy, and fit for her intended voyage. The survey shall be made before any part of the cargo is taken on board, except so much as may be necessary for ballasting the ship, and such portion of cargo if laden on board shall be shifted, if required by the emigration officer or surveyors, so as to expose to view successively every part of the frame of the ship. In case of noncompliance with any of the requirements of this section, the owner, charterer or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than five pounds sterling : provided always, that in case any “passenger ship” shall be reported by any such surveyors not to be seaworthy, or not fit for her said intended voyage, the owner or charterer, if he shall think fit, may require, by writing under his hand, the emigration officer, or in his absence

Penalty on non-compliance.

Power to owners to appeal against surveyor’s report of ships not being seaworthy.

the chief officer of customs, to appoint three other competent surveyors, of whom two at least shall be shipwrights, to survey the said ship, at the expense of the said owner or charterer, and the said officer shall thereupon appoint such surveyors, who shall survey the said ship, and if they shall, by an unanimous report under their hands (but not otherwise), declare the said ship to be seaworthy, and fit for her intended voyage, the said ship shall then, for the purposes of this act, be deemed seaworthy for such voyage.

20. In every "passenger ship" the beams supporting the "passenger decks" shall form part of the permanent structure of the ship: they shall be of adequate strength, in the judgment of the emigration officer at the port of clearance, and shall be firmly secured to the ship to his satisfaction. The "passenger decks" shall be at least one inch and a half in thickness, and shall be laid and firmly fastened upon the beams continuously from side to side of the compartment in which the passengers are berthed. The height between that part of any deck on which passengers are carried and the deck immediately above it shall not be less than six feet. In case of noncompliance with any of the requirements of this section, the owner, charterer or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

As to the construction of beams and decks.

21. There shall not be more than two tiers of berths on any one deck in any "passenger ship," and the interval between the floor of the berths and the deck immediately beneath them shall not be less than six inches, nor the interval between each tier of berths and between the uppermost tier and the deck above it less than two feet six inches; the berths shall be securely constructed, and of dimensions not less than six feet in length and eighteen inches in width for each statute adult, and shall be sufficient in number for the proper accommodation of all the passengers contained in the list of passengers hereinbefore required to be delivered by the master of the ship. No part of any berth shall be placed within nine inches of any water-closet erected in the between-decks. In case of noncompliance with any of the requirements of this section, the owner, charterer or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Arrangement and size of berths.

22. In every "passenger ship" all the male passengers of the age of fourteen years and upwards who shall not occupy berths with their wives shall, to the satisfaction of the emigration officer at the port of clearance, be berthed in the fore part of the ship, in a compartment divided off from the space appropriated to the other passengers by a substantial and well-secured bulk-head, without opening into, or communication with, any adjoining passenger berth, or in separate rooms if the ship be fitted with enclosed berths: not more than one passenger, unless husband and wife, or females or children under twelve years of age, shall be placed in or occupy the same berth. In case of noncompliance with any of the requirements of this section, the owner, charterer or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Single men to be berthed in a separate compartment.

As to numbers and sexes in one berth.

Penalty.

23. No berths in a "passenger ship" occupied by passengers during the voyage shall be taken down until forty-eight hours after the arrival of such ship at the port of final discharge, unless all the passengers shall have voluntarily quitted the ship before the expiration of that time. In case of noncompliance with any of the requirements of this section, the master of such ship shall be liable for each offence to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Berths not to be removed till passengers landed.

Space to be allotted as an hospital.

24. In every "passenger ship" there shall be a sufficient space properly divided off to the satisfaction of the emigration officer at the port of clearance, to be used exclusively as an hospital or hospitals for the passengers: this space shall be under the poop, or in the round house, or in any deck house which shall be properly built and secured to the satisfaction of such emigration officer, or on the upper passenger deck, and not elsewhere, and shall in no case be less than eighteen clear superficial feet, for every fifty passengers which the ship shall carry. Such hospitals shall be fitted with bed-places, and supplied with proper beds, bedding and utensils, to the satisfaction of the emigration officer at the port of clearance, and throughout the voyage kept so fitted and supplied. In case of noncompliance with any of the requirements of this section, the owner, charterer or master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Penalty.

Regulation as to construction of privies.

25. No "passenger ship" shall clear out or proceed to sea unless fitted, to the satisfaction of the emigration officer at the port of clearance, with at least two privies, and with two additional privies on deck for every one hundred passengers on board, and in ships carrying as many as fifty female passengers, with at least two water-closets under the poop, or elsewhere on the upper deck, to the satisfaction of such emigration officer, for the exclusive use of the women and young children; all of which privies and water-closets shall be firmly constructed and maintained in a serviceable and cleanly condition throughout the voyage, and shall not be taken down until the expiration of forty-eight hours after the arrival of the ship at the port of final discharge, unless all the passengers sooner quit the ship; provided that such privies shall be placed in equal numbers on each side of the ship, and need not in any case exceed twelve in number. In case of noncompliance with any of the requirements of this section, the master shall be liable to a penalty for each offence not exceeding fifty pounds nor less than five pounds sterling.

As to light and ventilation.

26. No "passenger ship" shall clear out or proceed to sea without such provision for affording light and air to the passenger decks as the circumstances of the case may, in the judgment of the emigration officer at the port of clearance, require; nor if there are as many as one hundred passengers on board, without having an adequate and proper ventilating apparatus, to be approved by such emigration officer and fitted to his satisfaction; the passengers shall, moreover, have the free and unimpeded use of the whole of each hatchway situated over the space appropriated to their use, and over each such hatchway there shall be erected such a boobyhatch or other substantial covering as shall, in the opinion of such emigration officer, afford the greatest amount of light and air, and of protection from wet, as the case will admit. In case of noncompliance with any of the requirements of this section, the owner, charterer or master of the ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds nor less than twenty pounds.

Penalty on non-compliance.

Regulations as to the carrying of boats;

27. Every "passenger ship" shall carry throughout the voyage a number of boats according to the following scale; (that is to say,)

Two boats for every ship of less than two hundred tons:

Three boats for every ship of two hundred and less than four hundred tons:

Four boats for every ship of four hundred and less than six hundred tons:

Five boats for every ship of six hundred and less than ten hundred tons:

Six boats for every ship of ten hundred and less than fifteen hundred tons:

Seven boats for every ship of fifteen hundred tons and upwards: pro-

vided that no "passenger ship" shall be required to carry a greater number of boats than are sufficient in the judgment of the emigration officer at the port of clearance to carry all the persons on board of such ship :

One of such boats shall in all cases be a long boat, and one shall be a properly fitted life boat, which shall be carried in such a manner as to be, in the opinion of the emigration officer, most available for immediate service : each of such boats shall be of a suitable size and description, to be approved by the emigration officer at the port of clearance, and shall be seaworthy, and properly supplied with all requisites, and kept clear at all times, for immediate use at sea : there shall likewise be on board each "passenger ship" if proceeding to any place to the southward of the equator at least two chronometers, and if to any place to the northward of the equator at least one chronometer, and on board of all "passenger ships" at least three steering and one azimuth compass, four properly fitted life buoys, kept ready at all times for immediate use, and some adequate means, to be approved by the emigration officer at the port of clearance, of making signals by night and in fogs ; also a fire engine, in proper working order, and of such description and power and either with or without such other apparatus for extinguishing fire as such officer may approve ; and not less than three bower anchors of such weight, and with cables of such length, size and material, as in the judgment of such emigration officer shall be sufficient for the size of the ship. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

of life boats ;

and of life buoys,
anchors and fire
engines, &c.

28. Every "passenger ship" shall be manned with an efficient crew for her intended voyage, to the satisfaction of the emigration officer from whom a clearance of such ship may be demanded, and the strength of the crew shall not be diminished, nor any of the men changed when once passed by such emigration officer, without his consent in writing, or that of the shipping master of the port of clearance, as required by the laws then in force regulating the shipping of seamen on board merchant vessels. Where the consent of the shipping master is obtained, it shall, within twenty-four hours thereafter, be lodged with such emigration officer. In case of non-compliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds : provided, that if the emigration officer shall consider the crew inefficient, and the owner or charterer of the ship shall thereupon appeal in writing to the said emigration commissioners, such commissioners shall, at the expense of the appellant, appoint two other emigration officers or two competent persons to examine into the matter, and the unanimous opinion of the persons so appointed, expressed under their hands, shall be conclusive on the point.

Regulations as
to carrying an
efficient crew.

29. No "passenger ship" shall clear out or proceed to sea if there shall be on board as cargo, horses, cattle, gunpowder, vitriol, lucifer matches, guano or green hides, nor if there shall be on board any other article or number of articles, whether as cargo or ballast, which by reason of the nature or quantity or mode of stowage thereof shall, either singly or collectively, be deemed by the emigration officer at the port of clearance likely to endanger the health or lives of the passengers or the safety of the ship : no part of the cargo, or of the passengers' luggage, or of the provisions, water or stores, whether for the use of the passengers or of the crew, shall be carried on the upper deck or on the "passenger decks," unless in the opinion of such emigration officer it shall be so placed as not to impede light or ventilation, nor interfere with the comfort of the passengers ; nor unless the same be stowed and secured to the satisfaction of such emigration officer, and the space occupied thereby or rendered, in the opinion of

Certain articles
prohibited as
cargo and ballast.

Stowage of cargo,
stores and
luggage to be
approved by emi-
gration officer.

such officer, unavailable for the accommodation of the passengers, shall (unless occupied by passengers' luggage) be deducted in calculating the space by which, under the provisions of this act, the number of passengers is regulated. In case of noncompliance with any of the requirements of this section, the owner, charterer or master, or any of them, shall for each offence be liable to a penalty not exceeding three hundred pounds nor less than five pounds sterling.

Computation of
voyages.

30. For the purposes of this act, the length of the voyage for a "passenger ship" proceeding from the United Kingdom to the under-mentioned places respectively shall be determined by the following scale; (that is to say,)

	If the ship be propelled by sails alone, or by steam power not sufficient, without the aid of sails, to propel the ship after the rate of five statute miles an hour.	If the ship be propelled either wholly or in aid of sails by steam engines of not less power than sufficient, without the aid of sails, to propel the ship after the rate of five statute miles an hour.
To North America (except the west coast thereof):—	<i>Days.</i>	<i>Days.</i>
For ships clearing out between the sixteenth day of January and the fourteenth day of October, both days inclusive	70	40
For ships clearing out between the fifteenth day of October and the seventeenth day of January, both days inclusive	80	45
To the West Indies, and any part of the east coast of Central or South America, north of the equator	70	40
To any part of the east coast of South America lying between the equator and the twenty-fifth degree of south latitude.	84	50
To the west coast of Africa north of the equator	84	50
To the coast of Africa south of the equator, or to the Falkland Islands, or to any part of the east coast of South America southward of the twenty-fifth degree of south latitude	105	65
To the Mauritius, and to the western coast of America south of the equator	126	75
To Ceylon	140	85
To Western Australia	120	85
To any other of the Australian Colonies . .	140	90
To New Zealand and to the western coast of America between the equator and the fortieth degree of north latitude	150	90
To the western coast of America north of the fortieth degree of north latitude, and the islands adjacent thereto	182	96

For the like purposes, the said emigration commissioners, acting by and under the authority of one of her Majesty's principal secretaries of state,

from time to time, by any notice in writing issued under the hands of any two of such commissioners, and published in the *London Gazette*, may nevertheless declare what shall be deemed to be the length of voyage from the United Kingdom to any of the said hereinbefore-mentioned places, or to any other port or place whatsoever, and may fix such different lengths of voyage as they may think reasonable for such different descriptions of vessels as aforesaid.

31. Before any "passenger ship" shall be cleared out the emigration officer at the port of clearance shall survey or cause to be surveyed by some competent person the provisions and water by this act required to be placed on board for the consumption of the passengers, and shall satisfy himself that the same are of a good and wholesome quality, and in a sweet and good condition, and are in quantities sufficient to secure throughout the voyage the issues hereinafter prescribed: in addition to the allowance of pure water for the use of each passenger there shall be shipped for cooking purposes an additional supply of pure water after the rate of at least ten gallons for every day of the prescribed length of voyage for every one hundred statute adults on board; and also for the use of the crew and all other persons on board an ample supply of wholesome provisions and pure water, which shall not be inferior in quality to the supply of the same articles provided for the consumption of the passengers: all such water, provisions and stores shall be provided and properly stowed away in accordance with the requirements of the twenty-ninth section of this act, by and at the expense of the owner, charterer or master of the ship; and if a clearance be obtained for any "passenger ship" which shall not be then stored with the requisite quantities of such water, provisions and stores, as are required by this act, the owner, charterer or master of such ship, or any of them, shall for each offence be liable to a penalty not exceeding three hundred pounds sterling.

Before clearance, provisions and water to be surveyed.

Provisions for the crew not to be inferior to those for the passengers.

Penalty.

32. If such emigration officer shall consider that any of the provisions or stores or water are not of a good and wholesome quality, or are not in a sweet and good condition, it shall be lawful for him to reject and mark the same, or the packages or vessels in which they are contained, and to direct the same to be landed or emptied; and if such rejected provisions or stores or water shall not thereupon be forthwith landed or emptied, or if, after being landed, the same or any part thereof shall be reshipped in such ship, the owner, charterer or master thereof, or any of them, or if reshipped in any other "passenger ship," the person causing the same to be reshipped shall for each offence be liable to a penalty not exceeding one hundred pounds sterling.

Power to emigration officer to reject and mark bad provisions, and direct the same to be landed, and if reshipped parties liable to a penalty.

33. In every "passenger ship" the water to be laden on board, as hereinbefore required, shall be carried in tanks or in casks to be approved by the emigration officer at the port of clearance. When casks are used, they shall be sweet and tight, of sufficient strength, and if of wood properly charred inside, and shall not be capable severally of containing more than three hundred gallons each: the staves of the water casks shall not be made of fir, pine or soft wood. In case of noncompliance with any of the requirements of this section, the owner, charterer or master of such ship, or any of them, shall for each offence be liable to a penalty not exceeding fifty pounds.

Water tanks or casks to be approved by emigration officer.

34. If any "passenger ship" shall be intended to call at any intermediate port or place during the voyage, for the purpose of taking in water, and if an engagement to that effect shall be inserted in the bond mentioned in the sixty-third section of this act, then it shall be sufficient to place on board at the port of clearance such supply of water as may be requisite, according to the rate hereinafter mentioned, for the voyage of the said ship to such

Provision for touching at intermediate ports to fill up water.

intermediate port or place, subject to the following conditions ; (that is to say,)

First, That the emigration officer signify his approval in writing of the arrangement, to be carried amongst the papers of the ship, and exhibited to the chief officer of customs, or to her Majesty's consular officer, as the case may be, at such intermediate port or place, and to be delivered to the chief officer of customs, or to her Majesty's consular officer, as the case may be, on the arrival of the said ship at the final port or place of discharge.

Secondly, That if the length of either portion of the voyage, whether to such intermediate port or place, or from such intermediate port or place to the final port or place of discharge, be not prescribed in or under the provisions of this act, the emigration officer at the port of clearance shall in every such case declare the same in writing to be carried amongst the papers of the ship :

Thirdly, That the ship shall have on board at the time a clearance is demanded tanks or water casks, of the description hereinbefore mentioned, sufficient for stowing the quantity of water required for the longest of such portions of the voyage as aforesaid.

Dietary scales of provisions.

35. The master of every "passenger ship" shall, during the voyage, including the time of detention at any place before the termination thereof, issue to each passenger, or, where the passengers are divided into messes, to the head man for the time being of each mess on behalf and for the use of all the members thereof, an allowance of pure water and sweet and wholesome provisions, of good quality, according to the following dietary scale ; (that is to say,) if the length of the voyage, computed as hereinbefore mentioned, shall not exceed eighty-four days for ships propelled by sails only, or fifty days for ships propelled by steam, or steam in aid of sails, then according to the dietary scale marked "A.;" but if the length of the voyage, computed as aforesaid, shall exceed eighty-four days for ships propelled by sails only, or fifty days for ships propelled by steam, or steam in aid of sails, then according to the dietary scale marked "B."

Water.

Three quarts of water daily to each statute adult, exclusive of the quantity hereinbefore specified as necessary for cooking the articles hereinafter required to be issued in a cooked state.

Provisions.

Weekly, per statute adult :—

	SCALE A. For voyages not exceeding 84 days for sailing vessels, or 50 days for steamers.		SCALE B. For voyages exceeding 84 days for sailing vessels, or 50 days for steamers.	
	lbs.	oz.	lbs.	oz.
Bread or biscuit, not inferior in quality to navy biscuit	3	8	3	8
Wheaten flour	1	0	2	0
Oatmeal	1	8	1	0
Rice	1	8	0	8
Peas	1	8	1	8
Potatoes	2	0	2	0
Beef	1	4	1	4
Pork	1	0	1	0
Tea	0	2	0	2
Sugar	1	0	1	0

Provisions.—Weekly, per statute adult—(continued).

	SCALE A. For voyages not exceeding 84 days for sailing vessels, or 50 days for steamers.	SCALE B. For voyages exceeding 84 days for sailing vessels, or 50 days for steamers.
	lbs. oz.	lbs. oz.
Salt	0 2	0 2
Mustard	0 $\frac{1}{2}$	0 $\frac{1}{2}$
Black or white pepper, ground	0 $\frac{1}{2}$	0 $\frac{1}{2}$
Vinegar	one gill.	one gill.
Lime juice . . . . .	.. ..	0 6
Preserved meat . . . . .	.. ..	1 0
Suet . . . . .	.. ..	0 6
Raisins . . . . .	.. ..	0 8
Butter . . . . .	.. ..	0 4

Substitutions.

Substitutions at the following rates may, at the option of the master of any "passenger ship," be made in the above dietary scales, that is to say:—

- | | | |
|--|-----|--|
| 1 lb. of preserved meat | for | 1 lb. of salt pork or beef. |
| 1 lb. of flour or of bread or biscuit, or $\frac{1}{2}$ lb. of beef or of pork } | for | { 1 $\frac{1}{2}$ lb. of oatmeal or 1 lb. of rice
or 1 lb. of peas. |
| 1 lb. of rice | for | 1 $\frac{1}{2}$ lb. of oatmeal, or <i>vice versa</i> . |
| $\frac{1}{2}$ lb. of preserved potatoes | for | 1 lb. of potatoes. |
| 10 oz. of currants | for | 8 oz. of raisins. |
| 3 $\frac{1}{2}$ oz. of cocoa or of coffee, roasted and ground | for | 2 oz. of tea. |
| $\frac{1}{2}$ lb. of treacle | for | $\frac{1}{2}$ lb. of sugar. |
| 1 gill of mixed pickles | for | 1 gill of vinegar. |

Provided, that the substituted articles be set forth in the contract tickets of the passengers. In case of noncompliance with any of the requirements of this section, the master of the ship shall be liable for each offence to a penalty not exceeding fifty pounds sterling. Penalty on non-compliance.

36. The messes into which the passengers in any passenger ship may be divided shall not consist of more than ten statute adults in each mess, and members of the same family, whereof one at least is a male adult, shall be allowed to form a separate mess. The provisions according to the above scale shall be issued, such of them as require to be cooked, in a properly cooked state, daily before two o'clock in the afternoon, to the head person for the time being of each mess on behalf and for the use of the members thereof. The first of such issues shall be made before two o'clock in the afternoon of the day of embarkation to or for such passengers as shall be then on board. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds. Size of messes.

37. The said emigration commissioners for the time being, acting under the authority of one of her Majesty's principal secretaries of state, may from time to time, by any notice for that purpose, issued under the hands of any two of such commissioners, and published in the *London Gazette*, authorize the issue of provisions in any "passenger ship" according to such other dietary scale (besides that hereinbefore prescribed) as shall in their opinion contain in the whole an equivalent amount of wholesome nutriment; and after the publication of such notice it shall be lawful for the master of any Provisions to be issued daily, and articles which require cooking to be cooked.

Power to emigration commissioners to authorize an alternative dietary scale.

Power to commissioners to alter dietary scale.	<p>"passenger ship" to issue provisions to his passengers either according to the scale by this act prescribed, or according to the scale authorized by the said commissioners, whichever may have been set forth in the contract tickets of the passengers: Provided always, that the said commissioners acting under such authority and by such notice as aforesaid may revoke or alter any such dietary scale authorized by them, as occasion may require.</p>
As to passengers' stewards.	<p>38. Every "passenger ship" carrying as many as one hundred passengers shall have on board a seafaring person, who shall be rated in the ship's articles as passengers' steward, and who shall be approved by the emigration officer at the port of clearance, and who shall be employed in messing and serving out the provisions to the passengers, and in assisting to maintain cleanliness, order and good discipline among the passengers, and who shall not assist in any way in navigating or working the ship. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.</p>
Penalty on non-compliance.	
As to passenger cooks and cooking apparatus.	<p>39. Every "passenger ship" carrying as many as one hundred passengers shall also have on board a seafaring man, or if carrying more than three hundred "statute adults," two seafaring men, to be rated and approved as in the case of passengers' stewards, who shall be employed in cooking the food of the passengers: a convenient place for cooking shall also be set apart on deck; and a sufficient cooking apparatus, properly covered in and arranged, shall be provided, to the satisfaction of the said emigration officer, together with a proper supply of fuel adequate, in his opinion, for the intended voyage. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.</p>
Penalty on non-compliance.	
In what cases interpreters to be carried.	<p>40. In every foreign "passenger ship" in which as many as one-half of the passengers shall be British subjects, unless the masters and officers or not less than three of them shall understand and speak intelligibly the English language, there shall be carried, where the number of passengers does not exceed two hundred and fifty, one person, and where it exceeds two hundred and fifty, two persons, who understand and speak intelligibly the language spoken by the master and crew and also the English language, and such persons shall act as interpreters, and be employed exclusively in attendance on the passengers, and not in the working of the ship; and no such ship shall clear out or proceed to sea without having such interpreter or interpreters on board; and the master of any such foreign ship clearing out or proceeding to sea without having such interpreter or interpreters on board as aforesaid shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.</p>
Penalty.	
In what cases a medical man must be carried.	<p>41. Every "passenger ship" shall in the following cases carry a duly qualified medical practitioner, who shall be rated on the ship's articles: First, when the duration of the intended voyage, as hereinbefore computed, exceeds eighty days in the case of ships propelled by sails, and forty-five days in the case of ships propelled by steam, and the number of passengers on board exceeds fifty: Second, whenever the number of persons on board (including cabin passengers, officers and crew) exceeds three hundred:</p>
Penalty.	<p>In case of noncompliance with any of the requirements of this section, the master shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than twenty pounds sterling.</p>
Qualification of medical man.	<p>42. No medical practitioner shall be considered to be duly qualified for the purposes of this act unless authorized by law to practise in some part</p>

of her Majesty's dominions, or in the case of a foreign ship, in the country to which such ship may belong, as a physician, surgeon or apothecary, nor unless his name shall have been notified to the emigration officer at the port of clearance, and shall not be objected to by him, nor unless he shall be provided with proper surgical instruments to the satisfaction of such officer: Provided nevertheless, that where the majority of the passengers in any "passenger ship," or as many as three hundred, are foreigners, any medical practitioner who may be approved by such emigration officer may be carried therein. In case any person shall proceed or attempt to proceed as medical practitioner in any "passenger ship" without being duly qualified as aforesaid, or contrary to any of the requirements of this section, such person and all persons aiding or abetting therein shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than ten pounds sterling.

Penalty.

43. The owner or charterer of every "passenger ship" shall provide for the use of the passengers a supply of medicines, medical comforts, instruments and other things proper and necessary for diseases and accidents incident to sea voyages, and for the medical treatment of the passengers during the voyage, including an adequate supply of disinfecting fluid or agent, together with printed or written directions for the use of the same respectively; and such medicines, medical comforts, instruments and other things shall, in the judgment of the emigration officer at the port of clearance, be good in quality, and sufficient in quantity, for the probable exigencies of the intended voyage, and shall be properly packed and placed under the charge of the medical practitioner, when there is one on board, to be used at his discretion. In case of noncompliance with any of the requirements of this section, the master of the ship shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling.

Medicines and medical comforts.

Penalty.

44. No "passenger ship," except as hereinafter provided, shall clear out or proceed to sea until some medical practitioner, to be appointed by the emigration officer at the port of clearance, shall have inspected such medicines, medical comforts and other articles as are required to be supplied by the last preceding section, and also all the passengers and crew about to proceed in the ship, and shall have certified to the said emigration officer that the said ship contains a sufficient supply of medicines, medical comforts, disinfecting fluid or agent, instruments and other things requisite for the medical treatment of the passengers during the intended voyage, nor until such medical practitioner shall have certified, and the said emigration officer shall be satisfied, that none of the passengers or crew appear, by reason of any bodily or mental disease, unfit to proceed, or likely to endanger the health or safety of the other persons about to proceed in such vessel. Such medical inspection of the passengers shall take place either on board the vessel, or, at the discretion of the said emigration officer, at such convenient place on shore before embarkation as he may appoint; and the master, owner or charterer of the ship shall pay to such emigration officer a sum at the rate of twenty shillings for every hundred persons so examined: Provided also, that in case the emigration officer on any particular occasion shall be unable to obtain the attendance of a medical practitioner, it shall be lawful for the master of any such ship to clear out and proceed to sea, on receiving from the said emigration officer written permission for the purpose. In case any "passenger ship" shall clear out or proceed to sea without having complied with all the requirements of this section, the master of such ship shall for each offence be liable to a penalty not exceeding one hundred pounds nor less than five pounds sterling.

Medical inspection of passengers and medicines, &c.

Penalty.

45. If the emigration officer at any port shall be satisfied that any person on board or about to proceed in any "passenger ship" is by reason of sickness

Relanding of passengers on account of sickness

or for purifying ships.

Penalty.

Passengers' Rights.

As to return of passage money to passengers re-landed on account of sickness, &c.

Subsistence money to be paid to passengers re-landed.

Return of passage money and compensation to passengers where passages not provided for them according to contract.

ness unfit to proceed, or is for that or for any other reason likely to endanger the health or safety of the other persons on board, the said emigration officer shall prohibit the embarkation of such person, or if embarked shall require him to be re-landed; and if such emigration officer shall be satisfied that it is necessary, for the purification of the ship or otherwise, that all or any of the passengers or persons on board should be re-landed, the said emigration officer may require the master of the ship to re-land all such passengers or persons, and the master shall thereupon re-land such passengers or persons, with so much of their effects and with such members of their families as cannot in the judgment of such emigration officer be properly separated from them; and in case of noncompliance with any of the requirements of this section, the master, owner or charterer of the ship shall for each offence be liable to a penalty not exceeding two hundred pounds nor less than ten pounds; and any passenger or person embarking after such prohibition, or refusing or neglecting to leave the ship when so directed to be re-landed, shall be liable to be summarily removed, and to a penalty not exceeding forty shillings for each day which he shall remain on board after the giving of such prohibition or direction.

46. Any passenger so re-landed on account of the sickness of himself or of any member of his family who may not be re-embarked and finally sail in such ship, or any emigration officer on his behalf, shall be entitled to recover, by summary process, the whole of the monies which may have been paid by or on account of such passenger for his passage and that of the members of his family so re-landed, from the party to whom the same may have been paid, or from the owner, charterer or master of such ship, or any of them, at the option of such passenger or emigration officer.

47. The master of any "passenger ship," from which the whole or any part of the passengers shall be re-landed on account of any of the reasons mentioned in section 45, shall pay to each passenger so re-landed (or if he shall be lodged and maintained in any hulk or establishment under the superintendence of the said emigration commissioners, then to the emigration officer at the port,) subsistence money at the rate of one shilling and sixpence a day for each statute adult until he shall be re-embarked or decline or neglect to proceed, or until his passage money, if recoverable under the forty-sixth section of this act, be returned to him.

48. If any person by whom or on whose behalf any contract shall have been made for a passage in any ship proceeding on any voyage to which this act extends, shall be at the place of embarkation before six o'clock in the afternoon of the day of embarkation appointed in such contract, and shall, if required, pay the stipulated passage money, or the unpaid balance thereof, and if from any cause whatever, other than his own refusal, neglect or default, or the prohibition of an emigration officer, as hereinbefore mentioned, or the requirements of any order in council, such passenger shall not be received on board before that hour, or if from any such cause as aforesaid any passenger who shall have been received on board shall not either obtain a passage in such ship to the port at which he may have contracted to land, or, together with all the immediate members of his family who may be included in such contract, obtain a passage to the same port in some other equally eligible ship, to sail within ten days from the expiration of the said day of embarkation, and in the meantime be paid subsistence money from the time and at the rate hereinafter mentioned, such passenger, or any emigration officer on his behalf, shall be entitled to recover either from the party to whom or on whose account the same may have been paid, or (in case such contract shall have been made with the owner, charterer or master of such ship, or with any person acting on behalf or by the authority of any of them respectively,) from such owner, charterer or master of such ship, or any of them, at the option of such passenger or emigration

officer, all monies which shall have been paid by or on account of such passengers for such passage, and also such further sum, not exceeding ten pounds in respect of each such passage, as shall, in the opinion of the justices of the peace who shall adjudicate on the complaint, be a reasonable compensation for the loss or inconvenience occasioned to such passenger by the loss of such passage.

49. If any ship, whether a "passenger ship" or otherwise, shall not actually put to sea, and proceed on her intended voyage before three o'clock in the afternoon of the day next after the said day of embarkation, the owner, charterer or master of such ship, or his or their agent, or any of them, at the option of such passenger or emigration officer, shall pay to every passenger entitled to a passage (or if such passenger shall be lodged and maintained in any establishment under the superintendence of the said emigration commissioners, then to the emigration officer at the port of embarkation,) subsistence money after the rate of one shilling and sixpence for each statute adult in respect of each day of delay for the first ten days, and afterwards three shillings a day for each statute adult, until the final departure of such ship on such voyage, and the same may be recovered in manner hereinafter mentioned; provided that if the passengers be maintained on board in the same manner as if the voyage had commenced, no such subsistence money shall be payable for the first two days next after the said day of embarkation, nor if they shall be maintained shall such subsistence money be payable if the ship be unavoidably detained by wind or weather, or by any cause not attributable in the opinion of the emigration officer to the act or default of the owner, charterer or master.

Subsistence in case of detention.

50. If any "passenger ship" shall, after clearance, be detained in port for more than seven days, or shall put into or touch at any port or place in the United Kingdom, she shall not put to sea again until there shall have been laden on board, at the expense of the owner, charterer or master of such ship, such further supply of pure water, wholesome provisions of the requisite kinds and qualities, and medical comforts and stores, as may be necessary to make up the full quantities of those articles hereinbefore required to be laden on board for the intended voyage, nor until any damage she may have sustained shall have been effectually repaired, nor until the master of the said ship shall have obtained from the emigration officer or his assistant, or, where there is no such officer, or in his absence, from the officer of customs at such port or place, a certificate to the same effect as the certificate hereinbefore required to enable the ship to be cleared out; and in case of any default herein the said master shall be liable, on conviction, as hereinafter mentioned, to a penalty not exceeding one hundred pounds nor less than fifty pounds sterling: and if the master of any "passenger ship" so putting into or touching at any port or place as aforesaid shall not within twelve hours thereafter report, in writing, his arrival, and the cause of his putting back, and the condition of his ship, and of her stores and provisions, to the emigration officer, or, as the case may be, to the officer of customs at the port, and shall not produce to such officer the official or "master's list" of passengers, such master shall for each offence be liable to a penalty not exceeding twenty pounds nor less than two pounds sterling.

Ships putting back to replenish provisions, &c.

Penalty on master for default.

Ships putting back to be reported to emigration officer.

Penalty on master for neglect.

51. If any "passenger ship" shall put into any port or place in the United Kingdom in a damaged state, and the master, charterer or owner shall not give a written undertaking that the said ship shall be made sound and seaworthy, and shall within six weeks from the day of her so putting into such port or place again proceed with her passengers on her intended voyage, and if the said ship shall not accordingly be made seaworthy and proceed on her intended voyage within that period, or if any such ship shall after the commencement of her voyage be wrecked, sunk or otherwise

In case of wreck or damage passengers to be provided with a passage by some other vessel, and maintained in the meantime.

passengers allowed to be carried in "passenger ships" generally, or from any particular ports, under the provisions of this act.

- (4.) For requiring duly qualified medical practitioners to be carried in "passenger ships," in cases where they would not be required to be carried under the provisions of this act.

Gazette and copies printed by Queen's printer to be evidence of orders, &c.

Any such order in council may from time to time in like manner be altered, amended and revoked, as occasion may require. Any copy of such order in council contained in the *London Gazette*, or purporting to be printed by the Queen's printer, shall throughout her Majesty's dominions be received in all legal proceedings as good and sufficient evidence of the making and contents of any such order in council.

Surgeon or master to exact obedience to rules and regulations. Penalty on refusal.

60. In every such "passenger ship" the medical practitioner on board, aided by the master thereof, or, in the absence of such medical practitioner, the master of such ship, is hereby empowered to exact obedience to all rules and regulations which may be prescribed by any such order in council to be observed on board passenger ships as aforesaid; and any person on board who shall neglect or refuse to obey any such rule or regulation, or who shall obstruct the medical practitioner or master of such ship in the execution of any duty imposed upon him by any such rule or regulation, or who shall offend against any of the provisions of this act, or who shall be guilty of riotous or insubordinate conduct, shall be liable for each offence to a penalty not exceeding two pounds sterling, and, in addition thereto, to be confined in the common gaol for any period not exceeding one month, at the discretion of the justices who shall adjudicate on the complaint.

Emigration commissioners to prepare an abstract of act and orders in council.

61. The said emigration commissioners shall from time to time prepare such abstracts as they may think proper of the whole or any part of this act, and of any such order in council as aforesaid; and four copies of such abstracts, together with a copy of this act, shall, on demand, be supplied by the principal officer of customs at the port of clearance to the master of every "passenger ship" proceeding from the United Kingdom to any port or place in her Majesty's possessions abroad; and such master shall, on request made to him, produce a copy of this act to any passenger on board, for his perusal, and, further, shall post, previous to the embarkation of the passengers, and shall keep posted so long as any passenger shall be entitled to remain in the ship, in at least two conspicuous places between the decks on which passengers may be carried, copies of such abstracts; and such master shall be liable to a penalty not exceeding forty shillings sterling for every day during any part of which by his act or default such abstracts shall fail to be so posted; and any person displacing or defacing such abstracts so posted shall be liable to a penalty not exceeding forty shillings sterling.

Such abstract to be posted up in each ship.

Penalty on master for neglect;

and on person defacing abstract.

Sale of spirits prohibited on board passenger ships. Penalty.

62. If in any "passenger ship" any person shall during the voyage, directly or indirectly, sell or cause to be sold any spirits or strong waters to any passenger, he shall be liable for every such offence to a penalty not exceeding twenty pounds nor less than five pounds sterling.

Bond to be given by masters of British and foreign passenger ships.

63. Before any "passenger ship" shall clear out or proceed to sea, the master, together with the owner or charterer of the ship, or, in the event of the absence of such owner or charterer, or if the master be the owner or charterer, one other good and sufficient person, to be approved by the chief officer of customs at the port of clearance, shall enter into a joint and several bond, in the sum of two thousand pounds, to her Majesty, her heirs and successors, according to the form contained in schedule (C.) hereto annexed. Such bond shall not be liable to stamp duty, and shall be executed in duplicate.

Counterpart of bond to be certi-

64. It shall be the duty of the chief officer of customs at the port of

clearance of any "passenger ship" bound to any of her Majesty's possessions abroad, to certify on one part of such bond that it has been duly executed by the said master of such ship and the other obligor, and to forward the same by post to the colonial secretary of the colony to which such "passenger ship" may be bound; and such certificate shall, in any Colonial Court of Judicature in which the bond may be put in suit, be deemed conclusive evidence of the due execution of the bond by the said master and the other obligor, and it shall not be necessary to prove the handwriting of the officer of customs who may have signed such certificate, nor that he was at the time of signing it chief officer of customs at the port of clearance; provided that no such bond shall be put in suit in any of her Majesty's possessions abroad after the expiration of three calendar months next after the arrival therein of the said ship, nor in the United Kingdom after the expiration of twelve calendar months next after the return of the said ship and of the said master to the United Kingdom.

ded, and sent to the colony to which ship bound, and to be received in evidence without further proof of execution.

65. In the absence of any agreement to the contrary, the owner shall be the party ultimately responsible, as between himself and the other persons hereby made liable in respect of any default in complying with the requirements of this act; and that if any such last-mentioned person shall pay any monies hereby made payable to or on behalf of any such passengers as aforesaid, the person so paying the same shall be entitled, in the absence of any such agreement as aforesaid, to sue for and recover from the owner the amount so paid, together with costs of suit.

In the absence of agreement to the contrary the owner to be responsible in respect of default.

Passage Brokers.

66. No person whatever shall directly or indirectly act as a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, or shall sell or let, or agree to sell or let, or be in anywise concerned in the sale or letting of passages in any ship, whether a "passenger ship" or otherwise, proceeding from the United Kingdom to any such place as aforesaid, unless such person, with two good and sufficient sureties to be approved by the emigration officer at the port nearest to the place of business of such person, shall have previously entered into a joint and several bond, in the sum of one thousand pounds to her Majesty, her heirs and successors, according to the form contained in schedule (D.) hereto annexed, which bond shall be renewed on each occasion of obtaining such licence as hereinafter mentioned, and shall be in duplicate, without stamps, and one part thereof shall be deposited at the office in London of the said emigration commissioners, and the other part thereof with the emigration officer at the port nearest to the place of business of such person; nor unless such person shall have obtained a licence, as hereinafter mentioned, to let or sell passages, nor unless such licence shall then be in force; and if any person shall offend in any particular against this enactment, every person so offending shall for each offence be liable to a penalty not exceeding fifty pounds nor less than twenty pounds, to be sued for and recovered as hereinafter mentioned: provided, that such bond shall not be required of any person who shall be one of the sworn brokers of the city of London: provided also, that there shall be excepted from the operation of this section the said emigration commissioners, and any persons contracting with them, or acting under their authority, and also any person acting as the agent of any passage broker in pursuance of an appointment made in the form prescribed by schedule (I.) hereto annexed, signed by such passage broker, and countersigned by such emigration officer as aforesaid: provided further, that the acts and defaults of any person acting under the authority or as agent of any passage broker shall, for the purposes of this act, be deemed to be also the acts and defaults of such passage broker: provided also, that nothing hereinbefore contained shall be held or construed to prevent the said emigration officer from accepting the bond of a guarantee society, such bond and such guarantee society as shall have been

No person to act as a passage broker without a licence.

Emigration commissioners and agents of passage brokers exempted from this section.

Passage brokers to be responsible for their agents.

approved by the Lords Commissioners of her Majesty's Treasury, in lieu of the bond of two good and sufficient securities as aforesaid.

How passage brokers' licences may be obtained.

Justices to give notice to emigration commissioners of licence granted.

Notice to be given to emigration commissioners of intended application for licences.

Power to justices to order licences to be forfeited, who shall give notice of the same to emigration commissioners.

As to application for licences in Scotland.

Existing licences to continue in force until 1st Feb. 1856.

Passage brokers to employ no agents except those expressly appointed by them.

Agents to produce their appointments on demand.

Penalty on persons fraudulently inducing others to engage passengers.

67. Any person wishing to obtain a licence to act as a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not being in the Mediterranean Sea, shall make application for the same to the justices at the petty sessions held for the district or place in which such person shall have his place of business; and such justices are hereby authorized (if they shall think fit) to grant a licence for that purpose, according to the form in the schedule (E.) hereunto annexed, which licence shall continue in force until the thirty-first day of December, in the year in which such licence shall be granted, and for thirty-one days afterwards, unless sooner forfeited, as herein mentioned; and upon granting such licence the justices shall cause a notice thereof according to the form in schedule (F.) hereto annexed to be transmitted forthwith by the post to the said emigration commissioners at their office in London: provided always, that no such licence shall be granted unless the party applying for the same shall show to the satisfaction of the justices that he has given such bond to her Majesty, her heirs and successors, as hereinbefore required, and has deposited one part thereof at the office in London of the said commissioners, or is a sworn broker of the city of London, and has in either case given notice to the said commissioners fourteen clear days at least before such application of his intention to apply for the same, which notice shall be transmitted by the post to the office in London of the said commissioners, and shall be according to the form contained in the schedule (G.) hereto annexed: provided also, that any justices of the peace who shall adjudicate on any offence against this act, or on any breach or nonperformance of any of the requirements thereof, are hereby authorized, if they shall think fit, and the offender is a passage broker, to order his licence to be forfeited, and the same shall thereupon be forfeited accordingly; and the said justices making such order shall forthwith cause notice of such forfeiture, in the form contained in the schedule (H.) hereunto annexed, to be transmitted by the post to the said commissioners at their office in London: in Scotland, where any person wishing to obtain such licence shall make application for the same to the sheriff or steward or sheriff substitute or steward substitute, in place of to such justices of the peace as aforesaid, the forms given in the said schedules (D.), (E.), (F.), (G.) and (H.) respectively shall still be adhered to, with such alterations as may be necessary.

68. Every passenger broker's licence in force at the commencement of this act shall, unless adjudged to be forfeited, continue in force until the first day of February, one thousand eight hundred and fifty-six, but no longer; and all acts done under such licence while in force shall be as valid as if done under any licence granted under this act.

69. No passage broker shall employ as an agent in his business of passage broker any person not holding from him the appointment of agent as hereinbefore mentioned; and every person holding such appointment shall produce the same, on the demand of any emigration officer, or of any person treating for a passage under this act: for any breach or violation of this enactment in any particular, the offender shall be liable for each offence to a penalty not exceeding fifty pounds nor less than twenty pounds.

70. If any person shall by false representation as to the size of a ship, or otherwise, or by any false pretence or fraud whatsoever, induce any person to engage a passage in any ship, the person so offending shall for each offence be liable to a penalty not exceeding twenty pounds nor less than five pounds sterling.

71. Every person whatever, except the said emigration commissioners and persons acting for them and under their direct authority, who shall receive money from any person for or in respect of a passage in any ship, or of a cabin passage in any "passenger ship" proceeding from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, shall give to the person paying such money a contract ticket, signed by the owner, charterer or master of the ship or "passenger ship" (as the case may be) in which the passage is to be provided, or by some person in their or his name, and on their or his behalf: such contract ticket shall be made out in plain and legible characters on a printed form, which in the case of cabin passengers shall be according to the form contained in schedule (K.) hereto annexed, and in the case of all other passengers in the form contained in schedule (L.) hereto annexed, or according to such other form as in either case may from time to time be prescribed by the said emigration commissioners in any notice issued under their hands, or the hands of any two of them, and published in the *London Gazette*: and any directions contained on the face of such form of contract ticket shall be obeyed in the same manner as if herein set forth. In case of noncompliance with any of the requirements of this section, or of any of the directions on such form of contract ticket not inconsistent with this act, the person so offending shall for each offence be liable to a penalty not exceeding fifty pounds nor less than five pounds sterling: Provided always, that such contract tickets shall not be liable to any stamp duty.

Contract tickets for cabin and other passengers.

72. Any person who shall alter or cause to be altered, after it is once issued, or shall induce any person to part with, render useless or destroy any such contract ticket, during the continuance of the contract which it is intended to evidence (except in the case of cabin passengers who may have consented thereto), shall be liable in each case to a penalty not exceeding twenty pounds sterling.

Penalty for inducing any one to part with contract ticket.

73. Any question which may arise respecting the breach or nonperformance of any of the stipulations in any such contract ticket, may, at the option of any passenger or cabin passenger interested therein, be heard and determined in a summary way by the justices of the peace, magistrates, sheriffs or other officers hereinafter authorized to adjudicate on offences and complaints under the act, who are hereby authorized to try such questions, and if they shall find that a breach of contract has been committed, to award to the complainant such damages and costs as they may think fit, not exceeding in any case the amount of the passage money specified in such contract ticket and twenty pounds; and if such damages and costs be not at once paid, payment thereof shall thereupon be enforced, in the same manner and by the same processes as the payment of subsistence money, or the return of passage money, may be enforced under this act: provided that if any passenger shall have obtained compensation or redress, under any of the other provisions of this act, he shall not be entitled to sue under this section for damages for the same matter or cause of complaint.

Summary remedy for breach of contract.

74. If any cabin or other passenger shall, on demand of any emigration officer, refuse or omit to produce his contract ticket, or if any owner, charterer or master of a ship shall on like demand refuse or omit to produce to any emigration officer in the United Kingdom the counterpart of any contract ticket issued by them, or on their behalf, for the inspection of such emigration officer, and for the purposes of this act, every person so offending against the requirements of this section shall for each offence be liable summarily to a penalty not exceeding ten pounds.

Penalty on cabin passengers and on masters, &c. omitting to produce contract tickets.

75. Any person who shall act as an "emigrant runner" without having previously been licensed and registered as hereinafter mentioned, or who while so acting shall omit to wear conspicuously on his breast such badge

Penalty on persons acting as runners without licence and badge,

and on passage brokers employing them.

as hereinafter mentioned, or who shall employ as an "emigrant runner" any person not duly licensed and registered, shall for each offence be liable to a penalty not exceeding five pounds nor less than twenty shillings.

Mode of licensing and registering runners.

76. The justices of the peace at any petty sessions held for the district or place within which any person wishing to act as an "emigrant runner" is to carry on his business may upon the recommendation in writing of an emigration officer or of the chief constable or other head officer of police of such district or place (but not otherwise) grant, if they shall think fit, to such person wishing to act as runner a licence for that purpose according to the form in schedule (M.) hereto annexed, and such runner shall within forty-eight hours thereafter (under a penalty not exceeding forty shillings for any default) lodge such licence with the nearest emigration officer, who shall register the name and abode of such runner in a book to be kept for that purpose, and shall number each name registered in arithmetical progression, and shall supply to such runner, on his paying a sum not exceeding seven shillings for the same, a badge of such form and description as shall be approved by the said emigration commissioners.

Emigrant runner's licence to be renewed annually.

77. Every such "emigrant runner's" licence shall continue in force until the thirty-first day of December in the year in which it shall be granted, unless sooner revoked by any justice of the peace, for any offence against this act or for any other misconduct committed by the holder of such licence. In case of any renewed licence it shall be sufficient for the emigration officer to note the fact, and the date of the renewal, in his registry book against the original entry therein of the name of the runner holding such renewed licence.

Penalty on runner for certain acts of misconduct.

78. If any "emigrant runner" shall refuse or fail to produce, on demand, his badge for inspection, or to permit any person to take the number thereof, or if he shall fail within forty-eight hours to give to the emigration officer of the port or place within which he is licensed to act notice in writing of any change in his place of abode, in order that his new abode may be registered, or of the loss of his badge, or if he shall mutilate or deface his badge or wear the same while unlicensed, or wear any other than the one delivered to him by such emigration officer as aforesaid, or permit any other person to use his badge, he shall for each such offence be liable to a penalty not exceeding forty shillings and to the forfeiture of his licence, if the convicting justices or magistrate shall so determine; and any person retaining or using any "emigrant runner's" badge not issued to him under the provisions of this act, or counterfeiting or forging any such badge, shall for each such offence be liable to a penalty not exceeding five pounds.

Penalty on persons using badges not lawfully issued to them.

How fresh badges may be obtained in case the old ones are lost or mutilated.

79. Such emigration officer as last aforesaid may, if he thinks fit, on payment to him of the sum of five shillings, deliver a new badge to any licensed "emigrant runner" who shall satisfy such officer that he has lost his original badge, or who shall deliver up the same in a mutilated or defaced state.

Runners not entitled to commission from any passage broker unless acting with his authority, nor from emigrants for procuring their passage.

80. No "emigrant runner" shall be entitled to recover from any passage broker any fee, commission or reward for or in consideration of any service connected with emigration, unless he shall be acting under the written authority of such passage broker, nor, under a penalty for each offence not exceeding five pounds, shall take or demand from any person about to emigrate any fee or reward for the procuring of his passage, or in any way relating thereto.

List of runners to be exhibited by brokers and sent

81. Every passage broker shall exhibit and keep constantly exhibited in some conspicuous place in his office or place of business a correct list, in

plain and legible characters, containing the names and addresses in full of every person for the time being holding such authority to act as his agent or as an emigrant-runner for him as aforesaid, and shall on or before the fifth day, or if that day be a Sunday, on or before the fourth day in every month, transmit a true copy of such list, duly signed by him, to the emigration officer stationed nearest to the place of business of such licensed passage broker, and shall report to such emigration officer every discharge or fresh engagement of an agent or of an "emigrant runner" within twenty-four hours of the same taking place. In case of noncompliance with any of the requirements of this section, the person so offending shall be liable for each offence to a penalty not exceeding five pounds nor less than two pounds.

to emigration officers.

82. It shall be lawful for the trustees or other persons charged with the management of any docks or basins in any port within the United Kingdom from which "passenger ships" are despatched to make, and from time to time to alter, amend or repeal, such rules and bye-laws as may be necessary for prescribing the docks, basins or other places at which persons arriving by sea at such ports for the purpose of emigrating, or actually emigrating therefrom, shall be landed and embarked, and the mode of their landing and embarkation, and for licensing porters to carry their luggage and otherwise to attend upon them, and for the storing and safe custody of their luggage, and for admitting persons to and excluding persons from access to such docks or basins, and for attaching a penalty not exceeding five pounds for the breach of any of such rules or bye-laws, such penalty to be sued for and recovered as other penalties are by this act directed to be recovered, except that instead of an emigration officer such trustees or other persons as aforesaid shall sue for and recover the same; and it shall further be lawful for such trustees, by their officers or servants, or by any police officer, to arrest and detain any person charged with the breach of any such rule or bye-law until brought before any justice of the peace, who is hereby authorized to adjudicate on the offence in a summary way: provided that no such rules or bye-laws shall take effect until they shall have been approved by one of her Majesty's principal secretaries of state, and published by his authority in the *London Gazette*, which publication shall for all purposes be deemed conclusive evidence of such rules and bye-laws, and of the approval thereof by such secretary of state.

Trustees of docks may pass bye-laws for regulating the landing and embarkation of intending emigrants and for licensing emigrant porters.

Bye-laws to be approved by Secretary of State, and published in the *London Gazette*.

83. And whereas the said emigration commissioners and persons acting under their authority issue from time to time certain forms of application and other papers for the use of persons desirous of emigrating by their assistance: and whereas it is expedient to afford additional security against the falsification or misuse of such forms and papers, and of any certificate of marriage or of birth or baptism, or other document or statement adduced in support of any application to the said commissioners for such assistance: be it therefore enacted, that if any person shall falsely represent himself to be or falsely assume to act as the agent of the said commissioners, or shall sell any such form of application, paper or embarkation order, or shall wilfully make any false representation in any such form of application, paper, certificate or document as aforesaid, or shall forge or fraudulently alter any signature or statement contained therein respectively, or shall personate any person named therein respectively, or shall aid or in any way abet any person in any such false representation, forgery, alteration or personation, the person so offending shall be liable for each such offence to a penalty not exceeding fifty pounds nor less than two pounds sterling.

Penalty for falsifying documents to obtain passages from emigration commissioners, and for personation.

Procedure for Penalties, &c.

84. All penalties and forfeitures imposed by this act shall be sued for in the United Kingdom by any emigration officer or his assistant, or by any person authorized thereto by the said emigration commissioners under the hands of any two of them, or by any collector or comptroller of her Ma-

By whom penalties are to be recovered.

jesty's customs, or by any other officer of her Majesty's customs authorized thereto in writing by the commissioners of her Majesty's customs, and in any of her Majesty's possessions abroad by any government emigration officer or agent, or by any such collector or comptroller of customs, or other officer of customs so authorized as aforesaid, or by any officer authorized to sue for penalties and forfeitures under this act by writing under the hand and seal of the governor of any such possession; and the said emigration commissioners, and the commissioners of her Majesty's customs, and every such governor, are hereby respectively empowered to grant such authority as aforesaid: and all sums of money made recoverable by this act as return of passage money, subsistence money, damages or compensation may be sued for and recovered by and for the use of any passenger entitled thereto under this act, or by any such officer as aforesaid, for and on behalf and to the use of any such passenger or any number of such passengers respectively, and in any case either by one or several informations or complaints.

By whom passage, subsistence, and compensation monies may be recovered.

Tribunal for adjudicating on offences and complaints under this act.

85. All penalties imposed and all sums of money made recoverable under this act, by way of passage money, subsistence money, compensation or damages for the breach of any stipulation in any contract ticket, shall and may be sued for and recovered before any two or more justices of the peace acting in any part of her Majesty's dominions or possessions in which the offence shall have been committed or the cause of complaint shall have arisen, or in which the offender or party complained against shall happen to be, or acting in any county or borough, or place adjacent to any navigable river or inlet of the sea on which such offence shall have been committed or cause of complaint have arisen; and upon information or complaint made before any one justice of the peace acting as aforesaid, he shall issue a summons, according to the form in the schedule (N.) hereto annexed, requiring the party offending or complained against to appear at a time and place to be named therein; and every such summons shall be served on the party offending or complained against, or shall be left at his last known place of abode or of business, or on board any ship to which he may belong; and if such party shall not appear accordingly, then (upon proof of the due service of the summons by delivering the summons or a copy thereof to the party, or at his last known place of abode or of business, or on board any ship to which he may belong, to the person in charge of any such ship) any two of such justices so acting as aforesaid may either hear and determine the case in the absence of the party, or either of them may issue his warrant for apprehending and bringing such party before them or any two justices so acting as aforesaid; or the justice before whom the charge shall be made, if he shall have reason to suspect, from information upon oath, that the party is likely to abscond, may issue such warrant in the first instance, without any previous summons; and either upon the appearance of the party offending or complained against, or in his absence as aforesaid, any two of such justices so acting as aforesaid may hear and determine the case, either with or without any written information or complaint; and upon proof of the offence, or of the complainant's claim (as the case may be), either by confession of the party offending or complained against, or upon the oath of one or more credible witness or witnesses (and the justices are hereby authorized to summon and swear any witnesses who may be deemed necessary), it shall be lawful for such justices so acting as aforesaid to convict the offender, or to adjudicate upon the complaint, (such conviction or adjudication to be drawn up according to one of the forms of conviction or adjudication contained in schedule (O.) hereto annexed, or as near thereto as the circumstances of the case will admit,) and upon every such conviction to order the offender to pay such penalty as they may think proper, not exceeding the penalties hereinbefore imposed, and upon every such adjudication to order the party complained against to pay to the party suing for the same the sum of money or damages sued for, or so much

thereof as such justices shall think the complainant justly entitled to, together with, in every case, the costs of the proceedings; and if the monies and costs mentioned in such conviction or adjudication be not paid immediately or within the time limited in the order it shall be lawful for any two of such justices so acting as aforesaid, by warrant, (and although the written order of conviction or adjudication, or any minute thereof, may not have been served,) to cause the party offending to be committed to gaol, there to be imprisoned, with or without hard labour, according to the discretion of such justices, for any term not exceeding three calendar months, unless such monies and costs be sooner paid and satisfied: provided always, that in all proceedings taken under this act for which no form is herein expressly provided it shall be lawful to use forms similar, as nearly as circumstances will admit, to those contained in the schedule to an act passed in the session of parliament holden in the eleventh and twelfth years of the reign of her present Majesty, chapter forty-three.

Proviso where no forms of proceeding are prescribed by this act.

86. Every police or stipendiary magistrate, and in Scotland every sheriff or steward and sheriff substitute or steward substitute of a county or stewartry within his own county or stewartry, shall have such and the like powers, privileges and functions, and be entitled to exercise such and the like jurisdiction under this act, as any justice or two justices, or justices at petty sessions, have or is or are entitled to exercise under the provisions of this act; and all acts, matters and things competent to be done under the provisions of this act, by or before any justice or two justices of the peace, or justices at petty sessions, or otherwise, may be done by and before any police or stipendiary magistrate, and in Scotland by and before any sheriff or steward or sheriff substitute or steward substitute within his own county or stewartry.

Police and stipendiary magistrates, and in Scotland sheriff, &c. to have the same powers as justices of the peace.

87. No objection shall be taken or allowed to any complaint, information, summons or warrant under this act, for any alleged defect therein, either in substance or in form, or for any variance between such complaint or information and the evidence adduced on the hearing thereof; but if any variance shall appear to the justice or justices present and acting at such hearing to be such that the party so summoned and appearing has been thereby deceived or misled, it shall be lawful for such justice or justices, upon such terms as he or they shall think fit, to adjourn the hearing of the case to some future day, and in the meantime to commit the defendant to such safe custody as the said justice or justices may think fit, or to discharge him upon his recognizance, with or without sureties, to appear at such time and place as may be appointed; no conviction, order, adjudication or other proceeding under or in pursuance of this act shall be quashed or vacated for want of form.

No objection to be allowed, nor convictions to be quashed for want of form.

88. All penalties imposed by this act shall, when recovered, and notwithstanding any local act of parliament to the contrary, be paid to the emigration officer or officer of customs at whose suit the same shall have been recovered, for the use of her Majesty and her successors, and if recovered in the colonies shall be paid over by the party receiving the same into the colonial treasury, and shall form part of the general revenue of the colony, and if recovered in the United Kingdom shall be paid over to the said emigration commissioners if the party at whose suit the same shall have been recovered be an emigration officer or his assistant, and to her Majesty's commissioners of customs if the party at whose suit the same shall have been recovered be any officer of customs, to be by such emigration commissioners and commissioners of customs respectively duly accounted for; and all such penalties as may be recovered in the United Kingdom shall be appropriated to such purposes and in such manner as the Lord High Treasurer or the Commissioners of her Majesty's Treasury may from time to time direct and appoint: provided always, that it shall

Application of penalties.

Justices may award compensation.

tion out of penalties to party aggrieved.

be lawful for the justices of the peace who shall impose any such penalty at the same time to direct, if they shall think fit, that a part, not exceeding one moiety thereof, be applied to compensate any passenger for any wrong or damage which he may have sustained by the act or default in respect of which such penalty or forfeiture shall have been imposed.

Burden of proof to be on persons claiming exemption from act.

89. If in any suit, action, prosecution or other legal proceeding under this act any question shall arise whether any ship was or was not exempted from the provisions of this act or any of them, the burden of proving that such ship was so exempted shall lie on the party claiming the benefit of the exemption, and failing such proof it shall for any such purpose as aforesaid be taken and adjudged that the ship did come within the provisions of this act; and it shall not be necessary, in any information, complaint or other process or proceeding, to negative any exemption, proviso or condition contained in any section of this act on which such information, complaint or other process or proceeding shall be framed, neither shall it be necessary for the complainant to prove the negative, but the defendant may prove the affirmative thereof, if he will have advantage of the same.

Proof of negatives.

Proof of a party being an emigration officer.

90. If in any proceeding before any justice or justices of the peace under this act, or upon any action, suit or other proceeding whatsoever, against any person, for anything done either contrary to or in pursuance of this act, a question should arise whether any person is an emigration officer or assistant emigration officer, or an officer of customs, *visâ voce* evidence may be given of such fact by the officer himself, and shall be deemed legal and sufficient evidence.

Passengers suing not incompetent witnesses.

91. Any passenger suing under this act for any sum of money made recoverable by this act as passage money, subsistence money, or compensation, or damages, shall not be deemed an incompetent witness in any proceeding for the recovery thereof, notwithstanding the same, if recovered shall be applicable to his own use and benefit.

Tender of amends.

92. No plaintiff shall recover in any action against any emigration officer, his assistant, government emigration agent, or officer of customs, or other person, for anything done in pursuance of this act, if tender of sufficient amends shall have been made before such action brought, or if, after action brought, a sufficient sum of money shall have been paid into Court, by or on behalf of the defendant.

Limitation of actions against officers executing the act.

93. No action or suit shall be commenced against any emigration officer, his assistant, government emigration agent, officer of customs or other person, for anything done in pursuance of or under the authority of this act, until ten clear days' notice in writing, specifying distinctly the cause of action, has been given to the officer, agent or person as aforesaid against whom such action or suit is intended to be brought, nor after three calendar months next after the act committed and mentioned in such notice for which such action or suit shall be so brought; and every such action shall be brought, laid and tried where the cause of action shall have arisen, and not in any other place; and the defendant in such action or suit may plead the general issue, and give this act and any special matter in evidence, at any trial which shall be had thereupon; and if the matter or thing shall appear to have been done under or by virtue of this act, or if it shall appear that such action or suit was brought before ten clear days' notice thereof given as aforesaid, or if any action or suit shall not be commenced within the time hereinbefore limited, or shall be brought or laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant therein; and if a verdict shall be found for such defendant, or if the plaintiff in such action or suit shall become nonsuited, or suffer a discontinuance of

Defendant may plead the general issue, &c.

Costs.

such action, or if upon any demurrer in such action judgment shall be given for the defendant thereon, then and in any of the cases aforesaid such defendant shall recover full costs of suit as between solicitor and client, and shall have such remedy for recovering the same as any defendant may have for his costs in any other case by law.

94. Where no time is expressly limited within which any complaint or information is to be made or laid for any breach or nonperformance of any of the requirements of this act, the complaint shall be made or the information laid within twelve calendar months from the time when the matter of such complaint or information respectively arose, or in case the master of any ship is the offender or party complained against, within twelve calendar months next after his return to the country in which the matter of complaint or information arose.

Limitation of legal proceedings generally.

Colonial Voyages.

95. And whereas it is expedient to provide in certain cases for the carriage of passengers by sea from her Majesty's possessions abroad: Be it therefore enacted as follows: for the purposes of this act the term "colonial voyage" shall signify any voyage from any place within any of such possessions (except the territories under the government of the East India Company and the island of Hong Kong) to any place whatever, where the distance between such places shall exceed four hundred miles, or the duration of the voyage, to be prescribed as hereinafter mentioned, shall exceed three days.

Colonial voyages defined.

96. This act shall apply, so far as the same is applicable, to all ships carrying passengers on any such "colonial voyage," except as to such parts of the act as relate to the following matters; (that is to say,)

This act to apply to all colonial voyages, except as relates to matters herein named.

- (1.) To passage brokers and their licences:
- (2.) To passengers' contract tickets:
- (3.) To emigrant runners:
- (4.) To the giving bond to her Majesty:
- (5.) To the keeping on board a copy of this act:
- (6.) To orders in council regulating emigration from the United Kingdom, or prescribing rules for promoting health, cleanliness, order and ventilation:

Provided that if the prescribed duration of any "colonial voyage" be less than three weeks, then, in addition to the matters lastly hereinbefore excepted, the provisions of this act shall not extend or apply, so far as they relate to the following subjects; (namely,)

If any colonial voyage be less than three weeks, this act not to apply to subjects herein named.

The construction or thickness of the decks:

The berths and berthing:

The height between decks:

Privies:

Hospitals:

Light and ventilation:

Manning:

Passengers' stewards:

Passengers' cooks and cooking apparatus:

The surgeon, and medicine chest:

The maintenance of passengers for forty-eight hours after arrival:

Provided also, that in the case of such "colonial voyages" whereof the prescribed duration is less than three weeks, the requirements of this act respecting the issue of provisions shall not, except as to the issue of water, be applicable to any passenger who may have contracted to furnish his own provisions.

97. It shall be lawful for the governor of each of her Majesty's possessions abroad, by any proclamation to be by him from time to time issued for that purpose (which shall take effect from the issuing thereof), to declare

Governor of colonies may, by proclamation, declare length of voyage, and pre-

scribe scale of diet, medicines and medical comforts.

Copies of proclamations to be received as evidence.

Provision for survey of ships in the colonies, and for appointing surgeon thereto.

Power to the governor-general of India in council, by any act to be passed for that purpose, to adopt this act for India, and to make rules respecting food, passengers, surgeons, &c.;

and to declare in what manner penalties, &c. may be sued for and recovered.

Indian act may be enforced in the colonies in like manner as this act.

what shall be deemed for the purposes of this act to be the length of the voyage of any ship carrying passengers from such possession to any other place whatsoever, and to prescribe such scale of diet for the use of the passengers during the voyage as he shall think proper, and also to declare what medicines, medical comforts, medical instruments and other matters shall be deemed necessary for the medical treatment of the passengers during such "colonial voyage;" and the provisions and requirements of every such proclamation shall be enforced in all her Majesty's dominions as if they were incorporated in this act, and in like manner as the provisions of this act may be enforced; and a copy of any such proclamation, purporting to be under the hand of the governor of the colony wherein the same may have been issued, and under the public seal of such colony, shall in any part of her Majesty's dominions wherein the same shall be produced be received as good and sufficient evidence of the due issuing and of the contents of such proclamation, unless it shall be proved that such copy is not genuine.

98. It shall be lawful for the governors of any such possessions respectively to authorize such person or persons as they may think fit to make the like survey and examination of "passenger ships" sailing from such possessions respectively as is hereinbefore required to be made by two or more competent surveyors in respect of "passenger ships" sailing from the United Kingdom, and also to authorize in such cases, as to such governors may seem proper, any competent person to act as medical practitioner on board any "passenger ship" proceeding on a "colonial voyage."

99. This act shall not apply to any of the territories or places under the government of the East India Company: it shall, however, be lawful for the Governor-General of India in council, from time to time, by any act or acts to be passed for that purpose, to declare that this act or any part thereof shall apply to the carriage of passengers upon any voyage from any ports or places within such territories, to be specified in such act or acts, to any other places whatsoever, to be also specified in such act or acts; and also in like manner to authorize the substitution, as respects such voyages, of other articles of food and provisions for those hereinbefore enumerated; and to declare the rule of computation by which the length of any such voyage shall be estimated; and to determine the persons or officers who in such territories shall be entitled to exercise or perform the powers, functions or duties hereinbefore given to or imposed upon the emigration officers and officers of customs in the United Kingdom; and to authorize the employment on board any ship of a medical practitioner duly qualified by law to practise as a physician, surgeon or apothecary within such territories; and to declare for the purposes of this act the space necessary for passengers, and the age at which two children shall be considered equal to one statute adult, in ships that may clear out from any port or place within such territories; and also to declare in what manner, and before what authorities, and by what form of proceedings, the penalties imposed and the sums of money made recoverable by this act shall be sued for and recovered within such territories, and to what uses such penalties shall be applied: and on the passing of such Indian act or acts, and whilst the same shall remain in force, all such parts of this act as shall be adopted therein shall apply to and extend to the carriage of passengers upon such voyages as in the said Indian act or acts shall be specified. The provisions of such Indian act shall be enforced in all her Majesty's possessions in like manner as the provisions of this act may be enforced: every such Indian act shall be subject to disallowance and repeal, and shall in the same manner be transmitted to England, to be laid before both Houses of Parliament, as in the case of any other law made by the Governor-General in council.

100. The master of every ship bringing passengers into the United Kingdom from any place out of Europe, and not within the Mediterranean Sea, shall, within twenty-four hours after arrival, deliver to the emigration officer or his assistant, or in their absence to the chief officer of customs at the port of arrival, a correct list, signed by such master, and specifying the names, ages and callings of all the passengers embarked, and also the port or ports at which they respectively may have embarked, and showing which, if any of them, may have died, with the supposed cause of death, or been born on the voyage; and if any master shall fail so to deliver such list, or if the same shall be wilfully false, he shall, on conviction, as hereinbefore mentioned, be liable to a penalty not exceeding fifty pounds. Such emigration or customs officer shall, upon receipt of such list, transmit the particulars respecting any passenger named therein who may have died, with the supposed cause of death, or been born on the voyage, to the registrar-general of births, deaths and marriages, who shall file the same, and enter a copy thereof under his hand in the "Marine Register Book," which entry shall be dealt with and be of the same value as evidence as any other entry made in such book under the provisions of an act passed in the session of Parliament held in the sixth and seventh years of the reign of her present Majesty, intituled "An Act for registering Births, Deaths and Marriages in England."

Voyages to the United Kingdom.

List of passengers brought into the United Kingdom to be delivered by the master of the ship to the emigration officer.

Penalty for neglect.

Returns of births and deaths at sea to be made to the registrar-general.

6 & 7 W. 4, c. 86.

101. If any ship bringing passengers into the United Kingdom from any place out of Europe shall have on board a greater number of passengers or persons than in the proportions respectively prescribed in the fourteenth section of this act for ships carrying passengers from the United Kingdom, the master of such ship shall be liable, on such conviction as hereinbefore mentioned, to a penalty not exceeding ten pounds nor less than five pounds for each such person or statute adult constituting any such excess.

Penalty on masters for having on board a greater number of persons than prescribed by section 14 of this act.

102. The master of every passenger ship bringing passengers into the United Kingdom from any place out of Europe shall make to each statute adult during the voyage, including the time of detention, if any, at any port or place before the termination thereof, issues of pure water and of good and wholesome provisions in a sweet condition, in quantities not less in amount than is prescribed in the thirty-fifth section of this act for passengers proceeding from the United Kingdom; and in case of noncompliance with any of the requirements of this section the master of such ship shall, on such conviction as hereinbefore mentioned, be liable for each offence to a penalty not exceeding fifty pounds.

Provisions and water to be issued to passengers brought into the United Kingdom the same as in ships carrying passengers from the United Kingdom.

Penalty for default.

103. The schedules to this act shall be deemed to be part of this act, and all the directions therein contained shall be duly followed and enforced, under a penalty not exceeding ten pounds on the person failing to obey the same respectively.

Schedules to be part of the act.

[The Forms contained in the Schedule to the above Act will be found, post, p. ccxcv.]

24 VICT. c. 10.

An Act to extend the Jurisdiction and improve the Practice of the High Court of Admiralty. [17th May, 1861.]

"WHEREAS it is expedient to extend the jurisdiction and improve the practice of the High Court of Admiralty of England:" Be it therefore enacted as follows:

1. This act may be cited for all purposes as "The Admiralty Court Act, short title, 1861."

APPDX.

Interpretation of terms.

2. In the interpretation and for the purposes of this act (if not inconsistent with the context or subject) the following terms shall have the respective meanings hereinafter assigned to them; that is to say,
 "Ship" shall include any description of vessel used in navigation not propelled by oars:
 "Cause" shall include any cause, suit, action, or other proceeding in the Court of Admiralty.

Commencement of act.

3. This act shall come into operation on the first day of June, one thousand eight hundred and sixty-one.

As to claims for building, equipping or repairing of ships.

4. The High Court of Admiralty shall have jurisdiction over any claim for the building, equipping, or repairing of any ship, if at the time of the institution of the cause the ship or the proceeds thereof are under arrest of the Court.

As to claims for necessities.

5. The High Court of Admiralty shall have jurisdiction over any claim for necessities supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales: Provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court.

As to claims for damage to cargo imported.

6. The High Court of Admiralty shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the owner, master or crew of the ship, unless it is shown to the satisfaction of the Court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales: Provided always, that if in any such cause the plaintiff do not recover twenty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court.

As to claims for damage by any ship.

7. The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship.

High Court of Admiralty to decide questions as to ownership, &c., of ships.

8. The High Court of Admiralty shall have jurisdiction to decide all questions arising between the co-owners, or any of them, touching the ownership, possession, employment and earnings of any ship registered at any port in England or Wales, or any share thereof, and may settle all accounts outstanding and unsettled between the parties in relation thereto, and may direct the said ship or any share thereof to be sold, and may make such order in the premises as to it shall seem fit.

Extending 17 & 18 Vict. c. 104, as to claims for salvage of life.

9. All the provisions of "The Merchant Shipping Act, 1854," in regard to salvage of life from any ship or boat within the limits of the United Kingdom, shall be extended to the salvage of life from any British ship or boat, wheresoever the services may have been rendered, and from any foreign ship or boat, where the services have been rendered either wholly or in part in British waters.

As to claims for wages and for disbursements by master of a ship.

10. The High Court of Admiralty shall have jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship, whether the same be due under a special contract or otherwise, and also

over any claim by the master of any ship for wages earned by him on board the ship, and for disbursements made by him on account of the ship : Provided always, that if in any such cause the plaintiff do not recover fifty pounds he shall not be entitled to any costs, charges or expenses incurred by him therein, unless the judge shall certify that the cause was a fit one to be tried in the said Court.

11. The High Court of Admiralty shall have jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of "The Merchant Shipping Act, 1854," whether the ship or the proceeds thereof be under arrest of the said Court or not.

3 & 4 Vict. c. 65, in regard to mortgages extended to Court of Admiralty.

12. The High Court of Admiralty shall have the same powers over any British ship, or any share therein, as are conferred upon the High Court of Chancery in England by the sixty-second, sixty-third, sixty-fourth and sixty-fifth sections of "The Merchant Shipping Act, 1854."

Sections 62 to 65 of 17 & 18 Vict. c. 104, extended to Court of Admiralty.

13. Whenever any ship or vessel, or the proceeds thereof, are under arrest of the High Court of Admiralty, the said Court shall have the same powers as are conferred upon the High Court of Chancery in England by the ninth part of "The Merchant Shipping Act, 1854."

Part 9 of 17 & 18 Vict. c. 104, extended to Court of Admiralty.

14. The High Court of Admiralty shall be a Court of Record for all intents and purposes.

Court to be a Court of Record.

15. All decrees and orders of the High Court of Admiralty, whereby any sum of money, or any costs, charges or expenses shall be payable to any person, shall have the same effect as judgments in the superior Courts of common law, and the persons to whom any such monies, or costs, charges or expenses, shall be payable, shall be deemed judgment creditors, and all powers of enforcing judgments possessed by the superior Courts of common law, or any judge thereof, with respect to matters depending in the same Courts, as well against the ships and goods arrested as against the person of the judgment debtor, shall be possessed by the said Court of Admiralty with respect to matters therein depending ; and all remedies at common law possessed by judgment creditors shall be in like manner possessed by persons to whom any monies, costs, charges or expenses are by such orders or decrees of the said Court of Admiralty directed to be paid.

Decrees and orders of Court of Admiralty to have effect of judgments at common law.

16. If any claim shall be made to any goods or chattels taken in execution under any process of the High Court of Admiralty, or in respect of the seizure thereof, or any act or matter connected therewith, or in respect of the proceeds or value of any such goods or chattels, by any landlord for rent, or by any person not being the party against whom the process has issued, the registrar of the said Court may, upon application of the officer charged with the execution of the process, whether before or after any action brought against such officer, issue a summons calling before the said Court both the party issuing such process and the party making the claim, and thereupon any action which shall have been brought in any of her Majesty's superior Courts of Record, or in any local or inferior Court, in respect of such claim, seizure, act, or matter as aforesaid, shall be stayed, and the Court in which such action shall have been brought, or any judge thereof, on proof of the issue of such summons, and that the goods and chattels were so taken in execution, may order the party bringing the action to pay the costs of all proceedings had upon the action after issue of the summons out of the said Admiralty Court, and the judge of the said Admiralty Court shall adjudicate upon the claim, and make such order between the parties in respect thereof and of the costs of the proceedings, as to him shall seem fit, and such order shall be enforced in like manner as any order made in any suit brought in the said Court. Where any such claim shall

As to claims to goods taken in execution.

be made as aforesaid the claimant may deposit with the officer charged with the execution of the process either the amount or value of the goods claimed, the value to be fixed by appraisement in case of dispute, to be by the officer paid into Court to abide the decision of the judge upon the claim, or the sum which the officer shall be allowed to charge as costs for keeping possession of the goods until such decision can be obtained, and in default of the claimant so doing the officer may sell the goods as if no such claim had been made, and shall pay into Court the proceeds of the sale, to abide the decision of the judge.

Powers of Superior Courts extended to Court of Admiralty.

17. The judge of the High Court of Admiralty shall have all such powers as are possessed by any of the superior Courts of common law or any judge thereof to compel either party in any cause or matter to answer interrogatories, and to enforce the production, inspection and delivery of copies of any document in his possession or power.

Party in Court of Admiralty may apply for an order for inspection by Trinity Masters.

18. Any party in a cause in the High Court of Admiralty shall be at liberty to apply to the said Court for an order for the inspection by the Trinity masters or others appointed for the trial of the said cause, or by the party himself or his witnesses, of any ship or other personal or real property, the inspection of which may be material to the issue of the cause, and the Court may make such order in respect of the costs arising thereout as to it shall seem fit.

Admission of documents.

19. Any party in a cause in the High Court of Admiralty may call on any other party in the cause by notice in writing to admit any document, saving all just exceptions, and in case of refusal or neglect to admit, the costs of proving the document shall be paid by the party so neglecting or refusing, whatever the result of the cause may be, unless at the trial the judge shall certify that the refusal to admit was reasonable.

Power to Court of Admiralty, when personal service of citation has not been effected, to order parties to proceed.

20. Whenever it shall be made to appear to the judge of the High Court of Admiralty that reasonable efforts have been made to effect personal service of any citation, monition or other process issued under seal of the said Court, and either that the same has come to the knowledge of the party thereby cited or monished, or that he wilfully evades service of the same, and has not appeared thereto, the said judge may order that the party on whose behalf the citation, monition or other process was issued be at liberty to proceed as if personal service had been effected, subject to such conditions as to the judge may seem fit, and all proceedings thereon shall be as effectual as if personal service of such citation, monition or other process had been effected.

As to the service of subpoena out of England and Wales.

21. The service in any part of Great Britain or Ireland of any writ of subpoena ad testificandum or subpoena duces tecum, issued under seal of the High Court of Admiralty, shall be as effectual as if the same had been served in England or Wales.

Power to issue new writs or other process.

22. Any new writ or other process necessary or expedient for giving effect to any of the provisions of this act may be issued from the High Court of Admiralty in such form as the judge of the said Court shall from time to time direct.

Judge and registrar to have same power as to arbitration as judges and masters at common law.

23. All the powers possessed by any of the superior Courts of common law or any judge thereof, under the Common Law Procedure Act, 1854, and otherwise, with regard to references to arbitration, proceedings thereon, and the enforcing of awards of arbitrators, shall be possessed by the judge of the High Court of Admiralty in all causes and matters depending in the said Court, and the registrar of the said Court of Admiralty shall possess

as to such matters the same powers as are possessed by the masters of the said superior Courts of common law in relation thereto.

24. The registrar of the High Court of Admiralty shall have the same powers under the fifteenth section of the Merchant Shipping Act, 1854, as are by the said section conferred on the masters of her Majesty's Court of Queen's Bench in England and Ireland.

Section 15 of 17 & 18 Vict. c. 104, extended to registrar of Court of Admiralty.

25. The registrar of the High Court of Admiralty may exercise, with reference to causes and matters in the said Court, the same powers as any surrogate of the judge of the said Court sitting in chambers might or could have heretofore lawfully exercised; and all powers and authorities by this or any other act conferred upon or vested in the registrar of the said High Court of Admiralty may be exercised by any deputy or assistant registrar of the said Court.

Powers of registrar and of deputy or assistant registrar.

26. The registrar of the said Court of Admiralty shall have power to administer oaths in relation to any cause or matter depending in the said Court; and any person who shall wilfully depose or affirm falsely in any proceeding before the registrar or before any deputy or assistant registrar of the said Court, or before any person authorized to administer oaths in the said Court, shall be deemed to be guilty of perjury, and shall be liable to all the pains and penalties attaching to wilful and corrupt perjury.

False oath or affirmation deemed perjury.

27. Any advocate, barrister at law, proctor, attorney or solicitor of ten years' standing may be appointed registrar or assistant or deputy registrar of the said Court.

Appointment of registrar and of deputy or assistant registrar.

28. Any advocate, barrister at law, proctor, attorney or solicitor may be appointed an examiner of the High Court of Admiralty.

Appointment of examiners.

29. Any person who shall have paid on his admission in any Court as a proctor, solicitor or attorney the full stamp duty of twenty-five pounds, and who has been or shall hereafter be admitted a proctor, solicitor or attorney (if in other respects entitled to be so admitted), shall be liable to no further stamp duty in respect of such subsequent admission.

Stamp duty not payable on subsequent admissions of proctors or solicitors.

30. Any proctor of the High Court of Admiralty may act as agent of any attorney or solicitor, and allow him to participate in the profits of and incident to any cause or matter depending in or connected with the said Court; and nothing contained in the act of the fifty-fifth year of the reign of king George the third, chapter one hundred and sixty, shall be construed to extend to prevent any proctor from so doing, or to render him liable to any penalty in respect thereof.

Proctor may act as agent of solicitors.

31. The act passed in the second year of the reign of king Henry the fourth, intituled "A Remedy for him who is wrongfully pursued in the Court of Admiralty," is hereby repealed.

2 Hen. 4, c. 11, repealed.

32. Any party aggrieved by any order or decree of the judge of the said Court of Admiralty, whether made *ex parte* or otherwise, may, with the permission of the judge, appeal therefrom to her Majesty in council, as fully and effectually as from any final decree or sentence of the said Court.

Power of appeal in interlocutory matters.

33. In any cause in the High Court of Admiralty bail may be taken to answer the judgment as well of the said Court as of the Court of Appeal, and the said High Court of Admiralty may withhold the release of any property under its arrest until such bail has been given: and in any appeal from any decree or order of the High Court of Admiralty the Court of Appeal may make and enforce its order against the surety or sureties who may

Bail given in the Court of Admiralty good in the Court of Appeal.

have signed any such bail bond in the same manner as if the bail had been given in the Court of Appeal.

As to the hearing of causes and cross causes.

34. The High Court of Admiralty may, on the application of the defendant in any cause of damage, and on his instituting a cross cause for the damage sustained by him in respect of the same collision, direct that the principal cause and the cross cause be heard at the same time and upon the same evidence; and if in the principal cause the ship of the defendant has been arrested or security given by him to answer judgment, and in the cross cause the ship of the plaintiff cannot be arrested, and security has not been given to answer judgment therein, the Court may, if it think fit, suspend the proceedings in the principal cause, until security has been given to answer judgment in the cross cause.

Jurisdiction of the Court.

35. The jurisdiction conferred by this act on the High Court of Admiralty may be exercised either by proceedings in rem or by proceedings in personam.

25 & 26 VICT. c. 63.

An Act to amend "The Merchant Shipping Act, 1854," "The Merchant Shipping Act Amendment Act, 1855," and "The Customs Consolidation Act, 1853." [29th July, 1862.]

17 & 18 Vict.
c. 104.
18 & 19 Vict.
c. 91.
16 & 17 Vict.
c. 107.

WHEREAS it is expedient further to amend "The Merchant Shipping Act, 1854," "The Merchant Shipping Act Amendment Act, 1855," and "The Customs Consolidation Act, 1853:" be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This act may be cited as "The Merchant Shipping Act Amendment Act, 1862," and shall be construed with and as part of "The Merchant Shipping Act, 1854," hereinafter termed the principal act.

Enactments in Table (A.) repealed.

2. The enactments described in table (A.) in the schedule to this act shall be repealed as therein mentioned, except as to any liabilities incurred before such repeal.

Registry and Measurement of Tonnage (Part II. of Merchant Shipping Act, 1854).

Equities not excluded by Merchant Shipping Act.

3. It is hereby declared that the expression "beneficial interest," whenever used in the second part of the principal act, includes interests arising under contract and other equitable interests; and the intention of the said act is that, without prejudice to the provisions contained in the said act for preventing notice of trusts from being entered in the register book or received by the registrar, and without prejudice to the powers of disposition and of giving receipts conferred by the said act on registered owners and mortgagees, and without prejudice to the provisions contained in the said act relating to the exclusion of unqualified persons from the ownership of British ships, equities may be enforced against owners and mortgagees of ships in respect of their interest therein, in the same manner as equities may be enforced against them in respect of any other personal property.

Tonnage rates under local acts may be levied on the registered tonnage.

4. Any body corporate or persons having power to levy tonnage rates on ships may, if they think fit, with the consent of the Board of Trade, levy such tonnage rates upon the registered tonnage of the ships as deter-

mined by the rules for the measurement of tonnage for the time being in force under the principal act, notwithstanding that the local act or acts under which such rates are levied provides for levying the same upon some different system of tonnage measurement.

Certificates for Engineers (Part III. of Merchant Shipping Act, 1854).

5. On and after the first day of June, one thousand eight hundred and sixty-three, every steam ship which is required by the principal act to have a master possessing a certificate from the Board of Trade shall also have an engineer or engineers possessing a certificate or certificates from the Board of Trade as follows; that is to say,

Steam ships to carry certificated engineers.

- (1.) Engineers' certificates shall be of two grades, viz., "first-class engineers' certificates," and "second-class engineers' certificates:"
- (2.) Every foreign-going steam ship of one hundred nominal horse power or upwards shall have as its first and second engineers two certificated engineers, the first possessing a "first-class engineer's certificate," and the second possessing a "second-class engineer's certificate," or a certificate of the higher grade:
- (3.) Every foreign-going steam ship of less than one hundred nominal horse power shall have as its only or first engineer an engineer possessing a "second-class engineer's certificate" or a certificate of the higher grade:
- (4.) Every sea-going home trade passenger steam ship shall have as its only or first engineer an engineer possessing a "second-class engineer's certificate" or a certificate of the higher grade:
- (5.) Every person who, having been engaged to serve in any of the above capacities in any such steam ship as aforesaid, goes to sea in that capacity without being at the time entitled to and possessed of such certificate as is required by this section, and every person who employs any person in any of the above capacities in such ship without ascertaining that he is at the time entitled to and possessed of such certificate as is required by this section, shall for each such offence incur a penalty not exceeding fifty pounds.

6. The Board of Trade shall from time to time cause examinations to be held of persons who may be desirous of obtaining certificates of competency as engineers: for the purpose of such examinations the Board of Trade shall from time to time appoint and remove examiners, and award the remuneration to be paid to them; lay down rules as to the qualification of applicants, and as to the times and places of examination; and generally do all such acts as it thinks expedient in order to carry into effect the examination of such engineers as aforesaid.

Examinations for engineers' certificates of competency.

7. All applicants for examinations shall pay such fees, not exceeding the sums specified in the table marked (B.) in the schedule hereto, as the Board of Trade directs; and such fees shall be paid to such persons as the said Board appoints for that purpose, and shall be carried to the account of the mercantile marine fund.

Fees to be paid by applicants for examination.

8. The Board of Trade shall deliver to every applicant who is duly reported to have passed the examination satisfactorily, and to have given satisfactory evidence of his sobriety, experience and ability, a certificate of competency, as first-class engineer or as second-class engineer, as the case may be.

Certificates of competency to be granted to those who pass.

9. Certificates of service for engineers, differing in form from certificates of competency, shall be granted as follows; that is to say,

Engineers' certificates of service to be delivered on proof of certain service.

- (1.) Every person who before the first day of April, one thousand eight hundred and sixty-two has served as first engineer in any foreign-

going steam ship of one hundred nominal horse power or upwards, or who has attained or attains the rank of engineer in the service of her Majesty or of the East India Company, shall be entitled to a "first-class engineer's certificate" of service :

- (2.) Every person who before the first day of April, one thousand eight hundred and sixty-two has served as second engineer in any foreign-going steam ship of one hundred nominal horse power or upwards, or as first or only engineer in any other steam ship, or who has attained or attains the rank of first-class assistant engineer in the service of her Majesty, shall be entitled to a "second-class engineer's certificate" of service :

Each of such certificates of service shall contain particulars of the name, place and time of birth, and the length and nature of the previous service of the person to whom the same is delivered ; and the Board of Trade shall deliver such certificates of service to the various persons so respectively entitled thereto, upon their proving themselves to have attained such rank or to have served as aforesaid, and upon their giving a full and satisfactory account of the particulars aforesaid.

Certain provisions of Merchant Shipping Act to apply to engineers' certificates.

10. The provisions of the principal act, with respect to the certificates of competency or service of masters and mates, contained in the 138th, 139th, 140th, 161st and 162nd sections of the said act, shall apply to certificates of competency or service granted under this act in the same manner as if certificates of competency and service to be granted to engineers under this act were specially mentioned and included in the said sections.

Power of Board of Trade and Local Marine Board to investigate conduct of certificated engineers.

11. The power by the 241st section of the principal act given to the Board of Trade or to any Local Marine Board of instituting investigations into the conduct of any master or mate whom it has reason to believe to be from incompetency or misconduct unfit to discharge his duties, shall extend to any certificated engineer whom the Board of Trade or any Local Marine Board has reason to believe to be from incompetency or misconduct unfit to discharge his duties, in the same manner as if in the said section the words "certificated engineer" had been inserted after "master" wherever "master" occurs in such section.

Declaration of engineer surveyor to contain statement concerning engineer's certificate.

12. The declaration required to be given by the engineer surveyor under section 309 of the principal act shall, in the case of a ship by this act required to have a certificated engineer, contain, in addition to the statements in the said section mentioned, a statement that the certificate or certificates of the engineer or engineers of such ship is or are such and in such condition as is required by this act.

Masters and Seamen (Part III. of Merchant Shipping Act, 1854).

Third part of act to apply to fishing boats, light-house vessels and pleasure yachts, with certain exceptions.

13. The following vessels ; that is to say,
 (1.) Registered seagoing ships exclusively employed in fishing on the coasts of the United Kingdom :
 (2.) Seagoing ships belonging to any of the three general light-house Boards :
 (3.) Seagoing ships being pleasure yachts :
 Shall be subject to the whole of the third part of the principal act ; except, —sections 136, 143, 145, 147, 149, 150, 151, 152, 153, 154, 155, 157, 158, 161, 162, 166, 170, 171, 231, 256, 279, 280, 281, 282, 283, 284, 285, 286 and 287.

Local Marine Board may determine number of quorum.

14. Whereas doubts have been entertained whether Local Marine Boards have the power of determining a quorum : it is hereby declared, that the power by the 119th section of the principal act given to every Local Marine Board of regulating the mode in which its meetings are to be held and its

business conducted includes the power of determining a quorum ; nevertheless, after the passing of this act such quorum shall never consist of less than three members.

15. The offices termed shipping offices in the principal act shall be termed mercantile marine offices, and the officers termed shipping masters and deputy shipping masters in the principal act shall be termed superintendents and deputy superintendents of such offices ; but nothing in this section contained shall invalidate or affect any act which may be done at any such office under the title of a shipping office, or any act which may be done by, with or to any of the said officers under the title of shipping master or deputy shipping master.

Titles of shipping masters.

16. Any person appointed to any office or service by or under any Local Marine Board shall be deemed to be a clerk or servant within the meaning of the sixty-eight section of the act of the twenty-fifth year of the reign of her present Majesty, chapter ninety-six :

Punishment for embezzlement in shipping offices.

If any such person fraudulently applies or disposes of any chattel, money or valuable security received by him whilst employed in such office or service for or on account of any such Local Marine Board, or for or on account of any other public board or department, to his own use or any use or purpose other than that for which the same was paid, entrusted to or received by him, or fraudulently withholds, retains or keeps back the same or any part thereof contrary to any lawful directions or instructions which he is required to obey in relation to such office or service, he shall be deemed guilty of embezzlement within the meaning of the said section :

Any such person shall, on conviction of such offence as aforesaid, be liable to the same pains and penalties as are thereby imposed upon any clerk or servant for embezzlement :

In any indictment against such person for such offence it shall be sufficient to charge any such chattel, money or valuable security as the property either of the Board by which he was appointed, or of the Board or department for or on account of which he may have received the same ; and no greater particularity in the description of the property shall be required in such indictment in order to sustain the same, or in proof of the offence alleged, than is required in respect of an indictment or the subject matter thereof by the seventy-first section of the said last-mentioned act.

17. Whereas it is expedient to make provision in certain cases for holding examinations of applicants for certificates of competency at places where there are no Local Marine Boards : be it enacted, That the Board of Trade, if satisfied that serious inconvenience exists at any port in consequence of the distance which applicants for certificates have to travel in order to be examined, may, with the concurrence of any Local Marine Board, send the examiner or examiners of that Local Marine Board to the port where such inconvenience exists ; and thereupon the said examiner or examiners shall proceed to such port, and shall there examine the applicants in the presence of such person or persons (if any) as the Board of Trade may appoint for the purpose ; and such examinations shall be conducted in the same manner and shall have the same effect as other examinations under the said act.

Examinations of masters and mates at ports where there are no Local Marine Boards.

18. It is hereby declared that the 182nd section of the principal act does not apply to the case of any stipulation made by the seamen belonging to any ship, which according to the terms of the agreement is to be employed on salvage service, with respect to the remuneration to be paid to them for salvage services to be rendered by such ship to any other ship or ships.

Construction of sect. 182 of principal act.
Stipulations concerning salvage.

19. The payment of seamen's wages required by the 209th section of the principal act shall, whenever it is practicable so to do, be made in money

Payment of wages to seamen abroad under

sect. 306 of principal act.

and not by bill; and in cases where payment is made by bill drawn by the master, the owner of the ship shall be liable to pay the amount for which the same is drawn to the holder or indorsee thereof; and it shall not be necessary in any proceeding against the owner upon such bill to prove that the master had authority to draw the same; and any bill purporting to be drawn in pursuance of the said section, and to be indorsed as therein required, if produced out of the custody of the Board of Trade or of the registrar general of seamen, or of any superintendent of any mercantile marine office, shall be received in evidence; and any indorsement on any such bill purporting to be made in pursuance of the said section, and to be signed by one of the functionaries therein mentioned, shall also be received in evidence, and shall be deemed to be *prima facie* evidence of the facts stated in such indorsement.

Wages and effects of deceased seamen.

20. The 197th section of the principal act shall extend to seamen or apprentices who within the six months immediately preceding their death have belonged to a British ship; and such section shall be construed as if there were inserted in the first line thereof after the words "such seaman or apprentice as last aforesaid" the words "or if any seaman or apprentice who has within the six months immediately preceding his death belonged to a British ship."

Recovery of wages, &c. of seamen lost with their ship.

21. The wages of seamen or apprentices who are lost with the ship to which they belong shall be dealt with as follows; (that is to say.)

- (1.) The Board of Trade may recover the same from the owner of the ship in the same manner in which seamen's wages are recoverable:
- (2.) In any proceedings for the recovery of such wages, if it is shown by some official return produced out of the custody of the registrar general of seamen or by other evidence that the ship has twelve months or upwards before the institution of the proceeding left a port of departure, and if it is not shown that she has been heard of within twelve months after such departure, she shall be deemed to have been lost with all hands on board, either immediately after the time she was last heard of or at such later time as the Court hearing the case may think probable:
- (3.) The production out of the custody of the registrar general of seamen or of the Board of Trade of any duplicate agreement or list of the crew made out at the time of the last departure of the ship from the United Kingdom, or of a certificate purporting to be a certificate from a consular or other public officer at any port abroad, stating that certain seamen or apprentices were shipped in the ship from the said port, shall, in the absence of proof to the contrary, be sufficient proof that the seamen or apprentices therein named were on board at the time of the loss:
- (4.) The Board of Trade shall deal with such wages in the manner in which they deal with the wages of other deceased seamen and apprentices under the principal act.

Relief of distressed seamen to be regulated by Board of Trade.

22. Whereas under the 211th and 212th sections of the principal act, and the 16th section of "The Merchant Shipping Act Amendment Act, 1855," provision is made for relieving and sending home seamen found in distress abroad: And whereas doubts are entertained whether power exists under the said sections of making regulations and imposing conditions which are necessary for the prevention of desertion and misconduct and the undue expenditure of public money: Be it enacted, and it is hereby declared, That the claims of seamen to be relieved or sent home in pursuance of the said sections or any of them shall be subject to such regulations and dependent on such conditions as the Board of Trade may from time to time make or impose; and no seaman shall have any right to demand to

be relieved or sent home except in the cases and to the extent provided for by such regulations and conditions.

23. The following rules shall be observed with respect to the cancellation and suspension of certificates ; (that is to say,)

Power of cancelling certificate to rest with the Court which hear the case.

- (1.) The power of cancelling or suspending the certificate of a master or mate by the 242nd section of the principal act conferred on the Board of Trade shall (except in the case provided for by the fourth paragraph of the said section) vest in and be exercised by the Local Marine Board, Magistrates, Naval Court, Admiralty Court, or other Court or tribunal by which the case is investigated or tried, and shall not in future vest in or be exercised by the Board of Trade :
- (2.) Such power shall extend to cancelling or suspending the certificates of engineers in the same manner as if "certificated engineer" or "certificated engineers" were inserted throughout such section after "master" or "masters" :
- (3.) Every such Board, Court, or Tribunal shall at the conclusion of the case, or as soon afterwards as possible, state in open Court the decision to which they may have come with respect to cancelling or suspending certificates, and shall in all cases send a full report upon the case, with the evidence, to the Board of Trade, and shall also, if they determine to cancel or suspend any certificate, forward such certificate to the Board of Trade with their report :
- (4.) It shall be lawful for the Board of Trade, if they think the justice of the case require it, to reissue and return any certificate which has been cancelled or suspended, or shorten the time for which it is suspended, or grant a new certificate of the same or any lower grade in place of any certificate which has been cancelled or suspended :
- (5.) The 434th and 437th sections of the principal act shall be read as if for the word "nautical" were substituted the words "nautical or engineering," and as if for the word "person" and "assessor" respectively were substituted the words "person or persons" and "assessor or assessors" respectively :
- (6.) No certificate shall be cancelled or suspended under this section unless a copy of the report or a statement of the case upon which the investigation is ordered has been furnished to the owner of the certificate before the commencement of the investigation, nor, in the case of investigations conducted by justices or a stipendiary magistrate, unless one assessor at least expresses his concurrence in the report.

24. Every master or mate or engineer whose certificate is or is to be suspended or cancelled in pursuance of this act shall, upon demand of the Board, Court, or Tribunal by which the case is investigated or tried, deliver his certificate to them, or, if it is not demanded by such Board, Court, or Tribunal, shall, upon demand, deliver it to the Board of Trade, or as it directs, and in default shall for each offence incur a penalty not exceeding fifty pounds.

Certificate to be delivered up.

Safety (Part IV. of Merchant Shipping Act, 1854).

25. On and after the first day of June one thousand eight hundred and sixty-three, or such later day as may be fixed for the purpose by order in council, the regulations contained in the table marked (C.) in the schedule hereto shall come into operation and be of the same force as if they were enacted in the body of this act ; but her Majesty may from time to time, on the joint recommendation of the Admiralty and the Board of Trade, by order in council, annul or modify any of the said regulations, or make new

Enactment of regulations concerning lights, fog signals, and sailing rules in Schedule, Table (C.)

regulations in addition thereto or in substitution therefor ; and any alterations in or additions to such regulations made in manner aforesaid shall be of the same force as the regulations in the said schedule.

Regulations to be published.

26. The Board of Trade shall cause the said regulations and any alterations therein or additions thereto hereafter to be made to be printed, and shall furnish a copy thereof to any owner or master of a ship who applies for the same ; and production of the *Gazette* in which any order in council containing such regulations or any alterations therein or additions thereto is published, or of a copy of such regulations, alterations, or additions, signed or purporting to be signed by one of the secretaries or assistant secretaries of the Board of Trade, or sealed or purporting to be sealed with the seal of the Board of Trade, shall be sufficient evidence of the due making and purport of such regulations, alterations, or additions.

Owners and masters bound to obey them.

27. All owners and masters of ships shall be bound to take notice of all such regulations as aforesaid, and shall, so long as the same continue in force, be bound to obey them, and to carry and exhibit no other lights and to use no other fog signals than such as are required by the said regulations ; and in case of wilful default, the master, or the owner of the ship if it appear that he was in such fault, shall, for each occasion upon which such regulations are infringed, be deemed to be guilty of a misdemeanor.

Breaches of regulations to imply wilful default of person in charge.

28. In case any damage to person or property arises from the non-observance by any ship of any regulation made by or in pursuance of this act, such damage shall be deemed to have been occasioned by the wilful default of the person in charge of the deck of such ship at the time, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary.

If collision ensues from breach of the regulations, ship to be deemed in fault.

29. If in any case of collision it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of any regulation made by or in pursuance of this act, the ship by which such regulation has been infringed shall be deemed to be in fault, unless it is shown to the satisfaction of the Court that the circumstances of the case made a departure from the regulation necessary.

Inspection for enforcing regulations.

30. The following steps may be taken in order to enforce compliance with the said regulations ; (that is to say,)

- (1.) The surveyors appointed under the third part of the principal act, or such other persons as the Board of Trade may appoint for the purpose, may inspect any ships for the purpose of seeing that such ships are properly provided with lights and with the means of making fog signals in pursuance of the said regulations, and shall for that purpose have the powers given to inspectors by the 14th section of the principal act :
- (2.) If any such surveyor or person finds that any ship is not so provided, he shall give to the master or owner notice in writing, pointing out the deficiency, and also what is, in his opinion, requisite in order to remedy the same :
- (3.) Every notice so given shall be communicated in such manner as the Board of Trade may direct to the collector or collectors of customs at any port or ports from which such ship may seek to clear or at which her transire is to be obtained ; and no collector to whom such communication is made shall clear such ship outwards or grant her a transire, or allow her to proceed to sea, without a certificate under the hand of one of the said surveyors or other persons appointed by the Board of Trade as aforesaid, to the effect that the said ship is

properly provided with lights and with the means of making fog signals in pursuance of the said regulations.

31. Any rules concerning the lights or signals to be carried by vessels navigating the waters of any harbour, river, or other inland navigation, or concerning the steps for avoiding collision to be taken by such vessels, which have been or are hereafter made by or under the authority of any local act, shall continue and be of full force and effect notwithstanding anything in this act or in the schedule thereto contained.

Rules for harbours under local acts to continue in force.

32. In the case of any harbour, river, or other inland navigation for which such rules are not and cannot be made by or under the authority of any local act, it shall be lawful for her Majesty in council, upon application from the harbour trust or body corporate, if any, owning or exercising jurisdiction upon the waters of such harbour, river, or inland navigation, or, if there is no such harbour trust or body corporate, upon application from persons interested in the navigation of such waters, to make rules concerning the lights or signals to be carried, and concerning the steps for avoiding collision to be taken by vessels navigating such waters; and such rules, when so made, shall, so far as regards vessels navigating such waters, have the same effect as if they were regulations contained in table (C.) in the schedule to this act, notwithstanding anything in this act or in the schedule thereto contained.

In harbours and rivers where no such rules exist they may be made.

33. In every case of collision between two ships it shall be the duty of the person in charge of each ship, if and so far as he can do so without danger to his own ship and crew, to render to the other ship, her master, crew, and passengers (if any), such assistance as may be practicable and as may be necessary in order to save them from any danger caused by the collision:

In case of collision one ship shall assist the other.

In case he fails so to do, and no reasonable excuse for such failure is shown, the collision shall, in the absence of proof to the contrary, be deemed to have been caused by his wrongful act, neglect, or default; and such failure shall also, if proved upon any investigation held under the third or the eighth part of the principal act, be deemed to be an act of misconduct or a default for which his certificate (if any) may be cancelled or suspended.

34. Notwithstanding anything in the 311th section of the principal act contained, it shall not be necessary for the surveys of passenger steamers to be made in the months of April and October; but no declaration shall be given by any surveyor under the fourth part of the said act for a period exceeding six months, and no certificate issued by the Board of Trade shall remain in force more than six months from the date thereof.

Surveys of steamers.

35. The following offenders, (that is to say,)

- (1.) Any person who, being drunken or disorderly, has been on that account refused admission into any duly surveyed passenger steamer by the owner or any person in his employ, and who, after having had the amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter such steamer:
- (2.) Any person who being drunken or disorderly on board any such steamer is requested by the owner or any person in his employ to leave the same at any place in the United Kingdom at which he can conveniently so do, and who, having had the amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request:
- (3.) Any person on board any such steamer who after warning by the master or any other officer of the steamer molests or continues to molest any passenger:
- (4.) Any person who, after having been refused admission into any such

Penalties on drunken or disorderly passengers.

On persons molesting passengers.

Penalties on per-

sons forcing way on board the ship when full.

And on persons refusing to quit the ship when full.

Penalties for avoiding payment of fares.

steamer by the owner or any person in his employ on account of such steamer being full, and who after having had the full amount of his fare (if he has paid the same) returned or tendered to him, nevertheless persists in attempting to enter the same :

- (5.) Any person, having got on board any such steamer, who, upon being requested on the like account by the owner or any person in his employ to leave such steamer before the same has quitted the place at which such person got on board, and who upon having the full amount of his fare (if he has paid the same) returned or tendered to him, refuses to comply with such request :
- (6.) Any person who travels or attempts to travel in any such steamer without having previously paid his fare, and with intent to avoid payment thereof :
- (7.) Any person who, having paid his fare for a certain distance, knowingly and wilfully proceeds in any such steamer beyond such distance without previously paying the additional fare for the additional distance, and with intent to avoid payment thereof :
- (8.) Any person who knowingly and wilfully refuses or neglects, on arriving at the point to which he has paid his fare, to quit any such steamer : and
- (9.) Any person on board any such steamer who does not when required by the master or other officer of such steamer either pay his fare or exhibit such ticket or other receipt (if any) showing the payment of his fare as is usually given to persons travelling by and paying their fare for such steamer ;

Shall for every such offence be liable to a penalty not exceeding forty shillings ; but such liability shall not prejudice the recovery of any fare payable by him.

Penalty for injuring steamer or molesting crew.

36. Any person on board any such steamer who wilfully does or causes to be done anything in such a manner as to obstruct or injure any part of the machinery or tackle of such steamer, or to obstruct, impede, or molest the crew or any of them in the navigation or management of such steamer, or otherwise in the execution of their duty upon or about such steamer, shall for every such offence be liable to a penalty not exceeding twenty pounds.

Manner of apprehending offenders.

37. It shall be lawful for the master or other officer of any duly surveyed passenger steamer, and for all persons called by him to his assistance, to detain any person who has committed any offence against any of the provisions of the two last preceding sections of this act, and whose name and address are unknown to such officer, and to convey such offender with all convenient despatch before some justice without any warrant or other authority than this act ; and such justice shall have jurisdiction to try the case, and shall proceed with all convenient despatch to the hearing and determining of the complaint against such offender.

Provisions as to carrying dangerous goods.

38. The provisions of the 329th section of the principal act shall extend to foreign ships when within the limits of the United Kingdom.

Pilotage (Part V. of Merchant Shipping Act, 1854).

Power of pilotage authorities to exempt from compulsory pilotage.

39. Whereas it is enacted by the principal act that every pilotage authority shall have power, in manner and subject to the conditions therein mentioned, to do the following things ; (that is to say,)

To exempt the masters of any ships or of any classes of ships from being compelled to employ qualified pilots :

To alter and reduce rates of pilotage.

To lower and modify the rates and prices or other remuneration to be demanded and received for the time being by pilots licensed by such authority :

To make arrangements with any other pilotage authority for altering the limits of their respective districts, and for extending the powers of such other authority, and transferring its own powers to such last-mentioned authority :

To arrange the limits of pilotage districts.

And whereas it is expedient that increased facilities should be given for effecting the objects contemplated by the said recited enactments, and for further amending the law concerning pilotage, and that in so doing means should be afforded for paying due regard to existing interests and to the circumstances of particular cases : Be it enacted, that it shall be lawful for the Board of Trade, by provisional order, to do the following things ; that is to say,

Power by provisional order,—

- (1.) Whenever any pilotage authority residing or having its place of business at one port has or exercises jurisdiction in matters of pilotage in any other port, to transfer so much of the said jurisdiction as concerns such last-mentioned port to any harbour trust or other body exercising any local jurisdiction in maritime matters at the last-mentioned port or to any body to be constituted for the purpose by the provisional order, or, in cases where the said pilotage authority is not the Trinity House of Deptford Strond, to the said Trinity House ; or to transfer the whole or any part of the jurisdiction of the said pilotage authority to a new body corporate or body of persons to be constituted for the purpose by the provisional order, so as to represent the interests of the several ports concerned :

To transfer pilotage jurisdiction ;
- (2.) To make the body corporate or persons to whom the said transfer is made a pilotage authority within the meaning of the principal act, with such powers for the purpose as may be in the provisional order in that behalf mentioned :

and to make consequent arrangements ;

To determine the limits of the district of the pilotage authority to which the transfer of jurisdiction is made :

To sanction a scale of pilotage rates to be taken by the pilots to be licensed by the last-mentioned pilotage authority :

To determine to what extent and under what conditions any pilots already licensed by the former pilotage authority shall continue to act under the new pilotage authority :

To sanction arrangements for the apportionment of any pilotage funds belonging to the pilots licensed by the former pilotage authority between the pilots remaining under the jurisdiction of that authority and the pilots who are transferred to the jurisdiction of the new authority :

To provide for such compensation or superannuation as may be just to officers employed by the former pilotage authority and not continued by the new authority :
- (3.) To constitute a pilotage authority and to fix the limits of its district in any place in the United Kingdom where there is no such authority ; so, however, that in the new pilotage districts so constituted there shall be no compulsory pilotage, and no restriction on the power of duly qualified persons to obtain licences as pilots :

to constitute new authorities ;
- (4.) To exempt the masters and owners of all ships, or of any classes of ships, from being obliged to employ pilots in any pilotage district or in any part of any pilotage district, or from being obliged to pay for pilots when not employing them in any district or in any part of any pilotage district, and to annex any terms and conditions to such exemptions :

to exempt from compulsory pilotage in any district ;
- (5.) In cases where the pilotage is not compulsory, and where there is no restriction on the power of duly qualified persons to obtain licences as pilots, to enable any pilotage authority to license pilots and fix pilotage rates for any part of the district within the jurisdiction of such authority for which no such licences or rates now exist :

to enable existing authorities to grant licences and fix rates ;
- (6.) In cases where the pilotage is not compulsory, and where there is

to raise rates ;

- no restriction on the power of duly qualified persons to obtain licences as pilots, to enable any pilotage authority to raise all or any of the pilotage rates now in force in the district or any part of the district within the jurisdiction of such authority :
- to facilitate recovery of rates in certain cases ;
- (7.) In cases where the pilotage is not compulsory, and where there is no restriction on the number of pilots, or on the power of duly qualified persons to obtain licences as pilots, to give additional facilities for the recovery of pilotage rates and for the prevention of the employment of unqualified pilots :
- to facilitate grants of licences.
- (8.) To give facilities for enabling duly qualified persons, after proper examination as to their qualifications, to obtain licences as pilots.
- Regulations with respect to manner of making and confirming provisional orders.
40. The following rules shall be observed with respect to provisional orders made in pursuance of this act :
- (1.) Application in writing for such order shall be made to the Board of Trade by some persons interested in the pilotage of the district or in the operation of the laws or regulations relating to such pilotage :
- (2.) Notice of such application having been made shall be published once at the least in each of two successive weeks in the month immediately succeeding the time of such application in the *Shipping Gazette*, and in some newspaper or newspapers circulating in the county, or, if there are more than one, in the counties adjacent to the pilotage district to be affected by the order :
- (3.) The notice so published shall state the objects which it is proposed to effect by the provisional order :
- (4.) The Board of Trade on receiving the application shall refer the same to the pilotage authority or authorities of the district, and shall receive and consider any objections which may be made to the proposed provisional order, and shall for that purpose allow at least six weeks to elapse between the time of referring the application to the pilotage authority and the time of making the provisional order :
- (5.) The Board of Trade shall, after considering all objections, determine whether to proceed with the provisional order or not ; and shall, if they determine to proceed with it, settle it in such manner and with such terms and conditions, not being inconsistent with the provisions of this act, as they may think fit ; and shall, when they have settled the same, forward copies thereof to the persons making the application and to the pilotage authority or authorities of the district or districts to which it refers :
- (6.) No such provisional order shall take effect unless and until the same is confirmed by parliament ; and for the purpose of procuring such confirmation the Board of Trade shall introduce into parliament a public general bill, or public general bills, in which, or in the schedule to which, the provisional order or provisional orders to be thereby confirmed shall be set out at length :
- (7.) If any petition is presented to either house of parliament against any such provisional order as aforesaid in the progress through parliament of the bill confirming the same, so much of the bill as relates to the order so petitioned against may be referred to a select committee, and the petitioner shall in such case be allowed to appear and oppose as in the case of private bills.
- Extension of exemptions from compulsory pilotage.
41. The masters and owners of ships passing through the limits of any pilotage district in the United Kingdom on their voyages between two places both situate out of such districts shall be exempted from any obligation to employ a pilot within such district, or to pay pilotage rates when not employing a pilot within such district : Provided that the exemption contained in this section shall not apply to ships loading or discharging at

any place situate within such district, or at any place situate above such district on the same river or its tributaries.

42. Whereas under the provisions of the "British Channel Pilotage Act, 1861," pilotage authorities have been established at the ports of Newport and Gloucester, and the pilots theretofore licensed by the Trinity House of Deptford Strond for those parts have ceased to be so licensed : And whereas no provision has been made by the said act for dealing with such interests as the said pilots may have in the Trinity House Pilot Fund mentioned in the principal act : Be it therefore enacted, That, notwithstanding the said pilots have ceased to be licensed by the Trinity House, the Trinity House may make such an equitable arrangement in the administration of the Trinity House Pilot Fund mentioned in the principal act with reference to the interests of the pilots so ceasing to be licensed by them as aforesaid as they may in their discretion think fit.

Arrangement of
pilot funds for
Bristol Channel
Pilots.

Lighthouses (Part VI. of Merchant Shipping Act, 1854).

43. The following rules shall be observed with respect to the inspection of local lighthouses, buoys, and beacons ; (that is to say.)

Lights, &c.
under local
authorities to be
inspected, &c. by
Trinity House,
and other general
authorities.

- (1.) It shall be the duty of each of the general lighthouse authorities, or of such persons as may be authorized by such authority for the purpose, to inspect all lights, buoys, and beacons situate within the limits of the jurisdiction of such general authority, but belonging to or under the jurisdiction of any local authorities, and to make such inquiries in respect thereof and of the management thereof as they may think fit :
- (2.) All officers and others having the care of such lighthouses, buoys, or beacons, or concerned in the management thereof, shall furnish all such information and explanations concerning the same as they may require :
- (3.) All such local authorities and their respective officers shall at all times give to the inspecting authority all such returns, explanations, or information concerning the lighthouses, buoys, and beacons within their jurisdiction, and the management thereof, as the said authority may from time to time require :
- (4.) The inspecting authority shall communicate to each local authority the results of its inspection of the lighthouses, buoys, and beacons within its jurisdiction, and shall also make general reports of the results of its inspection of local lighthouses, buoys, and beacons to the Board of Trade ; and such reports shall be laid before parliament :
- (5.) The powers given by the 394th section of the principal act to the general lighthouse authorities shall, so far as the same are applicable, extend and apply to the case of local buoys and beacons, other than local buoys and beacons placed or erected for temporary purposes, as well as to the case of local lighthouses.

44. The following persons shall be liable to pay light dues for any ship in respect of which light dues are payable ; (that is to say,) the owner or master, or such consignees or agents thereof as have paid or made themselves liable to pay any other charge on account of such ship in the port of her arrival or discharge, and in default of payment such light dues may be recovered in the same manner as penalties of the like amount may be recovered by virtue of the principal act.

Liability for and
recovery of light
dues.

45. Every consignee and agent (not being the owner or master) hereby made liable for the payment of light dues in respect of any ship may, out of any monies in his hands received on account of such ship, or belonging to the owner thereof, retain the amount of all dues so paid by him, together

Powers of con-
signees to retain
light dues paid
by them.

with any reasonable expenses he may have incurred by reason of such payment or liability.

Dues may be levied for local lights.

46. If any lighthouse, buoy, or beacon is erected or placed, or reconstructed, repaired, or replaced by any local authority having jurisdiction in the matter of lighthouses, buoys, or beacons, her Majesty may, on the application of the said local authority, by order in council fix such dues to be paid to the said local authority in respect of every ship which enters the port or harbour under the jurisdiction of such local authority or the estuary wherein such lighthouse, buoy, or beacon is situate, and which passes the said lighthouse, buoy, or beacon, and derives benefit therefrom, as her Majesty may deem reasonable :

The dues for the time being fixed by any such order in council as aforesaid shall be paid accordingly by the master of the said ship or other person or persons by whom the said light dues, if levied by one of the general lighthouse authorities, would be payable, and shall be recoverable in the same manner as light dues payable to such general authorities are recoverable.

Application of and accounts of such dues.

47. All light dues leviable by any local authority under this act shall be applied for the purposes of the construction, placing, maintenance, and improvement of the lighthouses, buoys, and beacons in respect of which the same are levied, and for no other purpose :

The local authority to whom the same are paid shall keep a separate account of the receipt and expenditure of such dues, and shall once in every year, or at such other time as the Board of Trade may determine, send a copy of such account to the Board of Trade, and shall send the same in such form and shall give such particulars in relation thereto as the Board of Trade may require :

Her Majesty may by order in council from time to time reduce, alter, or increase all or any of such dues, so that the same may, so far as it is practicable, be sufficient and not more than sufficient for the payment of the expenses incurred by the local authority in respect of the lighthouses, buoys, or beacons for which the dues are levied.

Construction of sect. 431 of principal act.

48. The 431st section of the principal act shall be read as if after the word "ships" there were inserted the words "and boats."

Wreck and Salvage (Part VIII. of Merchant Shipping Act, 1854).

Extension and amendment of summary jurisdiction in small salvage cases.

49. The provisions contained in the eighth part of the principal act for giving summary jurisdiction to two justices in salvage cases, and for preventing unnecessary appeals and litigation in such cases, shall be amended as follows ; (that is to say,)

- (1.) Such provision shall extend to all cases in which the value of the property saved does not exceed one thousand pounds, as well as to the cases provided for by the principal act :
- (2.) Such provisions shall be held to apply whether the salvage service has been rendered within the limits of the United Kingdom or not :
- (3.) It shall be lawful for one of her Majesty's principal secretaries of state, or in Ireland for the lord lieutenant or other chief governor or governors, to appoint out of the justices for any borough or county a rota of justices by whom jurisdiction in salvage cases shall be exercised :
- (4.) When no such rota is appointed, it shall be lawful for the salvors, by writing addressed to the justice's clerk, to name one justice, and for the owner of the property saved in like manner to name the other :
- (5.) If either party fails to name a justice within a reasonable time, the case may be tried by two or more justices at petty sessions :
- (6.) It shall be competent for any stipendiary magistrate, and also in

England for any county court judge, in Scotland for the sheriff or sheriff substitute of any county, and in Ireland for the recorder of any borough in which there is a recorder, or for the chairman of quarter sessions in any county, to exercise the same jurisdiction in salvage cases as is given to two justices :

- (7.) It shall be lawful for one of her Majesty's principal secretaries of state to determine a scale of costs to be awarded in salvage cases by any such justices or Court as aforesaid :
- (8.) All the provisions of the principal act relating to summary proceedings in salvage cases, and to the prevention of unnecessary appeals in such cases, shall, except so far as the same are altered by this act, extend and apply to all such proceedings, whether under the principal act or this act, or both of such acts.

50. Whenever any salvage question arises the receiver of wreck for the district may, upon application from either of the parties, appoint a valuer to value the property in respect of which the salvage claim is made, and shall, when the valuation has been returned to him, give a copy of the valuation to both parties ; and any copy of such valuation, purporting to be signed by the valuer, and to be attested by the receiver, shall be received in evidence in any subsequent proceeding ; and there shall be paid in respect of such valuation, by the party applying for the same, such fee as the Board of Trade may direct.

Receiver may appoint a valuer in salvage cases.

51. The words " court of session " in the four hundred and sixty-eighth section of the principal act shall be deemed to mean and include either division of the Court of Session or the lord ordinary officiating on the bills during vacation.

Jurisdiction of Court of Session in salvage cases.

52. Upon delivery of wreck or of the proceeds of wreck by any receiver to any person in pursuance of the provisions of the eighth part of the principal act such receiver shall be discharged from all liability in respect thereof, but such delivery shall not be deemed to prejudice or affect any question concerning the right or title to the said wreck which may be raised by third parties, nor shall any such delivery prejudice or affect any question concerning the title to the soil on which the wreck may have been found.

Delivery of wreck by receiver not to prejudice title.

53. Whereas by the principal act it is provided that the proceeds of wreck, if the same is not claimed by the owner within a year, and if no person other than her Majesty, her heirs and successors, is proved to be entitled thereto, shall, subject to certain deductions, be paid into the receipt of her Majesty's Exchequer in such manner as the commissioners of the Treasury may direct, and that the same shall be carried to and form part of the consolidated fund of the United Kingdom :

Crown rights to wreck.

And whereas doubts have been entertained whether the said last-recited provision is consistent with the arrangements concerning the hereditary revenues of the crown effected by the act of the first year of her present Majesty, chapter two : And whereas doubts have also been entertained whether due provision is made by the said act for paying to the revenues of the Duchies of Lancaster and Cornwall respectively such of the said proceeds as may belong to those Duchies :

1 Vict. c. 2.

It is hereby declared, That such of the said proceeds of wreck as belong to her Majesty in right of her crown shall, during the life of her present Majesty (whom God long preserve), be carried to and form part of the consolidated fund of the United Kingdom, and shall after the decease of her present Majesty (whom God long preserve) be payable and paid to her Majesty's heirs and successors :

And it is hereby further declared, That such of the said proceeds of

wreck as belong to her Majesty in right of her Duchy of Lancaster shall be paid to the receiver-general of the said Duchy or his sufficient deputy or deputies as part of the revenues of the said Duchy and be dealt with accordingly :

And it is hereby further declared and enacted, That the provision in the principal act contained regarding the sale of unclaimed wreck to which no owner establishes his claim within the period of one year, and to which no admiral, vice-admiral, lord of any manor, or person other than her Majesty, her heirs and successors, is proved to be entitled, is intended and shall be construed to apply to wreck of the sea belonging to her Majesty, her heirs and successors, in respect of the Duchy of Cornwall, or to the Duke of Cornwall for the time being in respect of his Duchy of Cornwall : But that the proceeds of such wreck shall, subject to such deductions as are in the same act mentioned, form part of the revenues of the Duchy of Cornwall, and be dealt with accordingly.

Liability of Shipowners (Part IX. of Merchant Shipping Act, 1854).

Shipowners
liability limited.

54. The owners of any ship, whether British or foreign, shall not, in cases where all or any of the following events occur without their actual fault or privity ; (that is to say,)

- (1.) Where any loss of life or personal injury is caused to any person being carried in such ship :
- (2.) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board any such ship :
- (3.) Where any loss of life or personal injury is by reason of the improper navigation of such ship as aforesaid caused to any person carried in any other ship or boat :
- (4.) Where any loss or damage is by reason of the improper navigation of such ship as aforesaid caused to any other ship or boat, or to any goods, merchandise, or other things whatsoever on board any other ship or boat :

be answerable in damages in respect of loss of life or personal injury, either alone or together with loss or damage to ships, boats, goods, merchandise, or other things, to an aggregate amount exceeding fifteen pounds for each ton of their ship's tonnage ; nor in respect of loss or damage to ships, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, to an aggregate amount exceeding eight pounds for each ton of the ship's tonnage ; such tonnage to be the registered tonnage in the case of sailing ships, and in the case of steam ships the gross tonnage without deduction on account of engine room :

In the case of any foreign ship which has been or can be measured according to British law, the tonnage as ascertained by such measurement shall, for the purposes of this section, be deemed to be the tonnage of such ship :

In the case of any foreign ship which has not been and cannot be measured under British law, the surveyor-general of tonnage in the United Kingdom, and the chief measuring officer in any British possession abroad, shall, on receiving from or by direction of the Court hearing the case such evidence concerning the dimensions of the ship as it may be found practicable to furnish, give a certificate under his hand, stating what would in his opinion have been the tonnage of such ship if she had been duly measured according to British law, and the tonnage so stated in such certificate shall, for the purposes of this section, be deemed to be the tonnage of such ship.

Limitation of
invalidity of in-
surances.

55. Insurances effected against any or all of the events enumerated in the section last preceding, and occurring without such actual fault or privity as therein mentioned, shall not be invalid by reason of the nature of the risk.

56. In any proceeding under the 506th section of the principal act or any act amending the same against the owner of any ship or share therein in respect of loss of life, the master's list or the duplicate list of passengers delivered to the proper officer of customs under the 16th section of "The Passengers Act, 1855," shall, in the absence of proof to the contrary, be sufficient proof that the persons in respect of whose death any such prosecution or proceeding is instituted were passengers on board such ship at the time of their deaths.

Proof of passengers on board lost ship.

Arrangements concerning Lights, Sailing Rules, Salvage, and Measurement of Tonnage in the case of Foreign Ships.

57. Whenever foreign ships are within British jurisdiction, the regulations for preventing collision contained in table (C.) in the schedule to this act, or such other regulations for preventing collision as are for the time being in force under this act, and all provisions of this act relating to such regulations, or otherwise relating to collisions, shall apply to such foreign ships; and in any cases arising in any British Court of justice concerning matters happening within British jurisdiction, foreign ships shall, so far as regards such regulations and provisions, be treated as if they were British ships.

Foreign ships in British jurisdiction to be subject to regulations in Table (C.) in Schedule.

58. Whenever it is made to appear to her Majesty that the government of any foreign country is willing that the regulations for preventing collision contained in table (C.) in the schedule to this act, or such other regulations for preventing collision as are for the time being in force under this act, or any of the said regulations, or any provisions of this act relating to collisions, should apply to the ships of such country when beyond the limits of British jurisdiction, her Majesty may, by order in council, direct that such regulations, and all provisions of this act which relate to such regulations, and all such other provisions as aforesaid, shall apply to the ships of the said foreign country, whether within British jurisdiction or not.

Regulations, when adopted by a foreign country, may be applied to its ships on the high seas.

59. Whenever it is made to appear to her Majesty that the government of any foreign country is willing that salvage shall be awarded by British Courts for services rendered in saving life from any ship belonging to such country when such ship is beyond the limits of British jurisdiction, her Majesty may, by order in council, direct that the provisions of the principal act and of this act, with respect to salvage for services rendered in saving life from British ships, shall in all British Courts be held to apply to services rendered in saving life from the ships of such foreign country, whether such services are rendered within British jurisdiction or not.

Provisions concerning salvage of life may, with the consent of any foreign country, be applied to ships on the high seas.

60. Whenever it is made to appear to her Majesty that the rules concerning the measurement of tonnage of merchant ships for the time being in force under the principal act have been adopted by the government of any foreign country, and are in force in that country, it shall be lawful for her Majesty by order in council to direct that the ships of such foreign country shall be deemed to be of the tonnage denoted in their certificates of registry or other national papers; and thereupon it shall no longer be necessary for such ships to be re-measured in any port or place in her Majesty's dominions, but such ships shall be deemed to be of the tonnage denoted in their certificates of registry or other papers, in the same manner, to the same extent, and for the same purposes in, to, and for which the tonnage denoted in the certificates of registry of British ships is deemed to be the tonnage of such ships.

Ships of foreign countries adopting the rule for measurement of tonnage need not be re-measured in this country.

61. Whenever an order in council has been issued under this act, applying any provision of this act or any regulation made by or in pursuance of this act to the ships of any foreign country, such ships shall in all cases

Effect of order in council.

arising in any British Court be deemed to be subject to such provision or regulation, and shall for the purpose of such provision or regulation be treated as if they were British ships.

Orders in council may be limited as to time, and qualified.

62. In issuing any order in council under this act her Majesty may limit the time during which it is to remain in operation, and may make the same subject to such conditions and qualifications, if any, as may be deemed expedient, and thereupon the operation of the said order shall be limited and modified accordingly.

Orders in council may be revoked and altered.

63. Her Majesty may by order in council from time to time revoke or alter any order previously made under this act.

Orders in council to be published in London Gazette.

64. Every order in council to be made under this act, shall be published in the *London Gazette* as soon as may be after the making thereof; and the production of a copy of the *London Gazette* containing such order shall be received in evidence, and shall be proof that the order therein published has been duly made and issued; and it shall not be necessary to plead such order specially.

Legal Procedure.

20 & 21 Vict. c. 43, s. 3, not to apply to proceedings under Board of Trade or this act, &c.

65. Nothing in the third section of the act passed in the twentieth and twenty-first years of the reign of her present Majesty, chapter forty-three, except so much thereof as provides for the payment of any fees that may be due to the clerk of the justices, shall be deemed to apply to extend to any proceeding under the direction of the Board of Trade, or under or by virtue of the provisions of the principal act or this act, or any act amending the same.

Delivery of Goods and Lien for Freight.

Interpretation of terms.

66. The following terms used in the sections of this act hereinafter contained shall have the respective meanings hereby assigned to them, if not inconsistent with the context or subject matter; (that is to say,)

"Report :"

The word "report" shall mean the report required by the customs laws to be made by the master of any importing ship:

"Entry :"

The word "entry" shall mean the entry required by the customs laws to be made for the landing or discharge of goods from an importing ship:

"Goods :"

The word "goods" shall include every description of wares and merchandise:

"Wharf :"

The word "wharf" shall include all wharves, quays, docks, and premises in or upon which any goods when landed from ships may be lawfully placed:

"Warehouse :"

The word "warehouse" shall include all warehouses, buildings, and premises in which goods when landed from ships may be lawfully placed:

"Wharf owner :"

The expression "wharf owner" shall mean the occupier of any wharf, as hereinbefore defined:

"Warehouse owner :"

The expression "warehouse owner" shall mean the occupier of any warehouse, as hereinbefore defined:

"Shipowner :"

The word "shipowner" shall include the master of the ship and every other person authorized to act as agent for the owner, or entitled to receive the freight, demurrage, or other charges payable in respect of such ship:

"Owner of goods,"

The expression "owner of goods" shall include every person who is for the time being entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien, if any, to such lien.

67. Where the owner of any goods imported in any ship from foreign parts into the United Kingdom fails to make entry thereof, or having made entry thereof to land the same or take delivery thereof and to proceed therewith with all convenient speed, by the times severally hereinafter mentioned, the shipowner may make entry of and land or unship the said goods at the times, in the manner, and subject to the conditions following ; (that is to say,)

Power to shipowner to enter and land goods in default of entry and landing by owner of goods.

- (1.) If a time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, then at any time after the time so expressed :
- (2.) If no time for the delivery of the goods is expressed in the charter party, bill of lading, or agreement, then at any time after the expiration of seventy-two hours, exclusive of a Sunday or holiday, after the report of the ship :
- (3.) If any wharf or warehouse is named in the charter party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed, and if they can be conveniently there received, the shipowner in landing them by virtue of this enactment shall cause them to be placed on such wharf or in such warehouse :
- (4.) In other cases the shipowner in landing goods by virtue of this enactment shall place them in or on some wharf or warehouse on or in which goods of a like nature are usually placed ; such wharf or warehouse being, if the goods are dutiable, a wharf or warehouse duly approved by the commissioners of customs for the landing of dutiable goods :
- (5.) If at any time before the goods are landed or unshipped the owner of the goods is ready and offers to land or take delivery of the same, he shall be allowed so to do, and his entry shall in such case be preferred to any entry which may have been made by the shipowner :
- (6.) If any goods are, for the purpose of convenience in assorting the same, landed at the wharf where the ship is discharged, and the owner of the goods at the time of such landing has made entry and is ready and offers to take delivery thereof, and to convey the same to some other wharf or warehouse, such goods shall be assorted at landing, and shall, if demanded, be delivered to the owner thereof within twenty-four hours after assortment ; and the expense of and consequent on such landing and assortment shall be borne by the shipowner :
- (7.) If at any time before the goods are landed or unshipped the owner thereof has made entry for the landing and warehousing thereof at any particular wharf or warehouse other than that at which the ship is discharging, and has offered and been ready to take delivery thereof, and the shipowner has failed to make such delivery and has also failed at the time of such offer to give the owner of the goods correct information of the time at which such goods can be delivered, then the shipowner shall, before landing or unshipping such goods under the power hereby given to him, give to the owner of the goods or of such wharf or warehouse as last aforesaid twenty-four hours notice in writing of his readiness to deliver the goods, and shall, if he lands or unships the same without such notice, do so at his own risk and expense.

68. If, at the time when any goods are landed from any ship, and placed in the custody of any person as a wharf or warehouse owner, the shipowner gives to the wharf or warehouse owner notice in writing that the goods are to remain subject to a lien for freight or other charges payable to the shipowner to an amount to be mentioned in such notice, the goods so landed shall, in the hands of the wharf or warehouse owner, continue liable to the same lien, if any, for such charges as they were subject to before the landing

If, when goods are landed, the shipowner give notice for that purpose, the lien for freight is to continue.

thereof; and the wharf or warehouse owner receiving such goods shall retain them until the lien is discharged as hereinafter mentioned, and shall, if he fail so to do, make good to the shipowner any loss thereby occasioned to him.

Lien to be discharged on proof of payment.

69. Upon the production to the wharf or warehouse owner of a receipt for the amount claimed as due, and delivery to the wharf or warehouse owner of a copy thereof or of a release of freight from the shipowner the said lien shall be discharged.

Lien to be discharged on deposit with warehouse owner.

70. The owner of the goods may deposit with the wharf or warehouse owner a sum of money equal in amount to the sum so claimed as aforesaid by the shipowner, and thereupon the lien shall be discharged; but without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

Warehouse owner may at the end of 15 days, if no notice is given, pay deposit to shipowner.

71. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does not within fifteen days after making it give to the wharf or warehouse owner notice in writing to retain it, stating in such notice the sum, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, the wharf or warehouse owner may, at the expiration of such fifteen days pay the sum so deposited over to the shipowner, and shall by such payment be discharged from all liability in respect thereof.

Course to be taken if notice to retain is given.

72. If such deposit as aforesaid is made with the wharf or warehouse owner, and the person making the same does within fifteen days after making it give to the wharf or warehouse owner such notice in writing as aforesaid, the wharf or warehouse owner shall immediately apprise the shipowner of such notice, and shall pay or tender to him out of the sum deposited the sum, if any, admitted by such notice to be payable, and shall retain the remainder or balance, or, if no sum is admitted to be payable, the whole of the sum deposited, for thirty days from the date of the said notice; and at the expiration of such thirty days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum or otherwise for the settlement of any disputes which may have arisen between them concerning such freight or other charges as aforesaid, and notice in writing of such proceedings has been served on him, the wharf or warehouse owner shall pay the said balance or sum over to the owner of the goods, and shall by such payment be discharged from all liability in respect thereof.

After 90 days warehouse owner may sell goods by public auction.

73. If the lien is not discharged, and no deposit is made as hereinbefore mentioned, the wharf or warehouse owner may, and, if required by the shipowner, shall, at the expiration of ninety days from the time when the goods were placed in his custody, or if the goods are of a perishable nature, at such earlier period as he in his discretion thinks fit, sell by public auction, either for home use or exportation, the said goods or so much thereof as may be necessary to satisfy the charges hereinafter mentioned.

Notices of sale to be given.

74. Before making such sale the wharf or warehouse owner shall give notice thereof by advertisement in two newspapers circulating in the neighbourhood, or in one daily newspaper published in London and in one local newspaper, and also, if the address of the owner of the goods has been stated on the manifest of the cargo, or on any of the documents which have come into the possession of the wharf or warehouse owner, or is otherwise known to him, give notice of the sale to the owner of the goods by letter

sent by the post ; but the title of a *bonâ fide* purchaser of such goods shall not be invalidated by reason of the omission to send notice as hereinbefore mentioned, nor shall any such purchaser be bound to inquire whether such notice has been sent.

75. In every case of any such sale as aforesaid the wharf or warehouse owner shall apply the monies received from the sale as follows, and in the following order :

Monies arising from sale, how to be applied.

1. If the goods are sold for home use in payment of any customs or excise duties owing in respect thereof :
2. In payment of the expenses of the sale :
3. In the absence of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, in payment of the rent, rates, and other charges due to the wharf or warehouse owner in respect of the said goods :
4. In payment of the amount claimed by the shipowner as due for freight or other charges in respect of the said goods :
5. But in case of any agreement between the wharf or warehouse owner and the shipowner concerning the priority of their respective charges, then such charges shall have priority according to the terms of such agreement :

and the surplus, if any, shall be paid to the owner of the goods.

76. Whenever goods are placed in the custody of a wharf or warehouse owner under the authority of this act, the said wharf or warehouse owner shall be entitled to rent in respect of the same, and shall also have power from time to time, at the expense of the owner of the goods, to do all such reasonable acts as in the judgment of the said wharf or warehouse owner are necessary for the proper custody and preservation of the said goods, and shall have a lien on the said goods for the said rent and expenses.

Warehouse owners rent and expenses.

77. Nothing in this act contained shall compel any wharf or warehouse owner to take charge of any goods which he would not be liable to take charge of if this act had not passed ; nor shall he be bound to see to the validity of any lien claimed by any shipowner under this act.

Warehouse owners protection.

78. Nothing in this act contained shall take away or abridge any powers given by any local act to any harbour trust, body corporate, or persons whereby they are enabled to expedite the discharge of ships or the landing or delivery of goods ; nor shall anything in this act contained take away or diminish any rights or remedies given to any shipowner or wharf or warehouse owner by any local act.

Saving powers under local acts.

The SCHEDULE referred to in this Act.

TABLE (A.) (See Section 2.)

Enactments to be repealed.

Reference to Act.	Title of Act.	Extent of Repeal.
8 & 9 Vict. c. 91 ..	An Act for the Warehousing of Goods.	Section 51 to be repealed immediately on the passing of this Act.
16 & 17 Vict. c. 107..	Customs Consolidation Act, 1853.	The last proviso in Section 74 and Sections 170, 171, and 172, to be repealed immediately on the passing of this Act.
17 & 18 Vict. c. 104..	Merchant Shipping Act, 1854.	Sections 295, 296, 297, 298, 299, to be repealed from the date at which the Regulations contained in Table (C.) in this Schedule come into operation. Sections 300, 322, 323, 504 and 505, to be repealed immediately on the passing of this Act.
19 & 20 Vict. c. 75 ..	An Act for the further Alteration and Amendment of the Laws and Duties of Customs.	Section 8 to be repealed immediately on the passing of this Act.

TABLE (B.) (See Section 6.)

Fees to be charged on Examination of Engineers.

For a First-class Engineer's Certificate	£2 0 0
For a Second-class Engineer's Certificate	1 0 0

TABLE (C.) (See Section 25.)

REGULATIONS FOR PREVENTING COLLISIONS AT SEA.

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REGULATIONS
FOR
PREVENTING COLLISIONS AT SEA.

Preliminary.

Art. 1. In the following rules every steam ship which is under sail and not under steam is to be considered a sailing ship ; and every steam ship which is under steam, whether under sail or not, is to be considered a ship under steam.

Rules concerning Lights.

Lights.

Art. 2. The lights mentioned in the following articles, numbered 3, 4, 5, 6, 7, 8 and 9, and no others, shall be carried in all weathers from sunset to sunrise.

Lights for
steam ships.

Art. 3. Seagoing steam ships when under weigh shall carry :

- (a.) *At the foremast head*, a bright white light, so fixed as to show an uniform and unbroken light over an arc of the horizon of twenty points of the compass, so fixed as to throw the light ten points on each side of the ship, viz., from right ahead to two points abaft the beam on either side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least five miles :
- (b.) *On the starboard side*, a green light, so constructed as to throw an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the starboard side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles :
- (c.) *On the port side*, a red light, so constructed as to show an uniform and unbroken light over an arc of the horizon of ten points of the compass, so fixed as to throw the light from right ahead to two points abaft the beam on the port side, and of such a character as to be visible on a dark night with a clear atmosphere at a distance of at least two miles :
- (d.) The said green and red side lights shall be fitted with inboard screens projecting at least three feet forward from the light, so as to prevent these lights from being seen across the bow.

Lights for
steam tugs.

Art. 4. Steam ships when towing other ships shall carry two bright white mast-head lights vertically, in addition to their side lights, so as to distinguish them from other steam ships. Each of these mast-head lights shall be of the same construction and character as the mast-head lights which other steam ships are required to carry.

Lights for
sailing ships.

Art. 5. Sailing ships under weigh or being towed shall carry the same lights as steam ships under weigh, with the exception of the white mast-head lights, which they shall never carry.

RÈGLES À SUIVRE

POUR

PRÉVENIR LES ABORDAGES EN MER.

Preliminaire.

Art. 1. Dans les règles qui suivent, tout navire à vapeur qui ne marche qu'à l'aide de ses voiles est considéré comme navire à voiles ; et tout navire dont la machine est en action, quelle que soit sa voilure, est considéré comme navire à vapeur.

Règles relatives aux feux et aux signaux en temps de brume.

Art. 2. Des feux mentionnés aux articles suivants doivent être portés, à l'exclusion de tous autres, par tous les temps, entre le coucher et le lever du soleil.

Art. 3. Les navires à vapeur, lorsqu'ils sont en marche, portent les feux ci-après :

- (a.) *En tête du mât de misaine*, un feu blanc placé de manière à fournir un rayonnement uniforme et non interrompu dans tout le parcours d'un arc horizontal de 20 quarts du compas, qui se compte depuis l'avant jusqu'à 2 quarts en arrière du travers de chaque bord et d'une portée telle qu'il puisse être visible à 5 milles au moins de distance, par une nuit sombre, mais sans brume :
- (b.) *A tribord*, un feu vert établi de façon à projeter une lumière uniforme et non interrompue sur un arc horizontal de 10 quarts du compas, qui est compris entre l'avant du navire, et 2 quarts sur l'arrière du travers à tribord, et d'une portée telle qu'il puisse être visible à 2 milles au moins de distance, par une nuit sombre, mais sans brume :
- (c.) *A bâbord*, un feu rouge construit de façon à projeter une lumière uniforme et non interrompue sur un arc horizontal de 10 quarts du compas, qui est compris entre l'avant du navire, et 2 quarts sur l'arrière du travers à bâbord, et d'une portée telle qu'il puisse être visible à 2 milles au moins de distance, par une nuit sombre, mais sans brume :
- (d.) Ces feux de côté sont pourvus, en dedans du bord, d'écrans dirigés de l'arrière à l'avant, et s'étendent à 0^m.90 en avant de la lumière, afin que le feu vert ne puisse pas être aperçu de bâbord avant, et le feu rouge de tribord avant.

Art. 4. Les navires à vapeur, quand ils remorquent, doivent, indépendamment de leurs feux de côté porter deux feux blancs verticaux en tête de mât, qui servent à les distinguer des autres navires à vapeur. Ces feux sont semblables au feu unique de tête de mât que portent les navires à vapeur ordinaires.

Art. 5. Les bâtiments à voiles, lorsqu'ils font route à la voile ou en remorque, portent les mêmes feux que les bâtiments à vapeur en marche, à l'exception du feu blanc du mât de misaine, dont ils ne doivent jamais faire usage.

**Exceptional
Lights for small
sailing vessels.**

Art. 6. Whenever, as in the case of small vessels during bad weather, the green and red lights cannot be fixed, these lights shall be kept on deck on their respective sides of the vessel ready for instant exhibition, and shall, on the approach of or to other vessels, be exhibited on their respective sides in sufficient time to prevent collision, in such manner as to make them most visible, and so that the green light shall not be seen on the port side, nor the red light on the starboard side.

To make the use of these portable lights more certain and easy, the lanterns containing them shall each be painted outside with the colour of the light they respectively contain, and shall be provided with suitable screens.

**Lights for ships
at anchor.**

Art. 7. Ships, whether steam ships or sailing ships, when at anchor in roadsteads or fairways, shall exhibit, where it can best be seen, but at a height not exceeding twenty feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear uniform and unbroken light visible all round the horizon, and at a distance of at least one mile.

**Lights for
pilot vessels.**

Art. 8. Sailing pilot vessels shall not carry the lights required for other sailing vessels, but shall carry a white light at the mast-head visible all round the horizon,—and shall also exhibit a flare-up light every fifteen minutes.

**Lights for
fishing vessels
and boats.**

Art. 9. Open fishing boats and other open boats shall not be required to carry the side lights required for other vessels; but shall, if they do not carry such lights, carry a lantern having a green slide on the one side and a red slide on the other side; and on the approach of or to other vessels such lantern shall be exhibited in sufficient time to prevent collision, so that the green light shall not be seen on the port side nor the red light on the starboard side.

Fishing vessels and open boats when at anchor or attached to their nets and stationary shall exhibit a bright white light.

Fishing vessels and open boats shall, however, not be prevented from using a flare-up in addition if considered expedient.

*Rules concerning Fog Signals.***Fog signals.**

Art. 10. Whenever there is fog, whether by day or night, the fog signals described below shall be carried and used, and shall be sounded at least every five minutes; viz. :—

- (a.) Steam ships under weigh shall use a steam whistle placed before the funnel not less than eight feet from the deck.
- (b.) Sailing ships under weigh shall use a fog horn.
- (c.) Steam ships and sailing ships when not under weigh shall use a bell.

*Steering and Sailing Rules.***Two sailing
ships meeting.**

Art. 11. If two sailing ships are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

**Two sailing
ships crossing.**

Art. 12. When two sailing ships are crossing so as to involve risk of collision, then if they have the wind on different sides, the ship with the wind on the port side shall keep out of the way of the ship with the wind on the starboard side, except in the case in which the ship with the wind on the port side is close hauled and the other ship free, in which case the latter ship shall keep out of the way; but if they have the wind on the same side, or if one of them has the wind aft, the ship which is to windward shall keep out of the way of the ship which is to leeward.

Art. 6. Lorsque des bâtiments à voiles sont d'assez faible dimension pour que leurs feux verts et rouges ne puissent pas être fixés d'une manière permanente, ces feux sont néanmoins tenus allumés sur le pont à leurs bords respectifs, prêts à être montrés instantanément à tout navire dont on constaterait l'approche, et assez à temps pour prévenir l'abordage.

Ces fanaux portatifs pendant cette exhibition sont tenus autant en vue que possible, et présentés de telle sorte que le feu vert ne puisse être aperçu de bâbord avant, et le feu rouge de tribord avant.

Pour rendre ces prescriptions d'une application plus certaine et plus facile, les fanaux sont peints extérieurement de la couleur du feu qu'ils contiennent, et doivent être pourvus d'écrans convenables.

Art. 7. Les bâtiments, tant à voiles qu'à vapeur, mouillés sur une rade, dans un chenal ou sur une ligne fréquentée, portent, depuis le coucher jusqu'au lever du soleil, un feu blanc placé à une hauteur qui n'excède pas 6 mètres au-dessus du plat-bord et projetant une lumière uniforme et non interrompue tout autour de l'horizon à la distance d'au moins un mille.

Art. 8. Les bateaux-pilotes à voiles ne sont pas assujettis à porter les mêmes feux que ceux exigés pour les autres navires à voiles ; mais ils doivent avoir en tête de mât un feu blanc visible de tous les points de l'horizon, et de plus montrer un feu de quart d'heure en quart d'heure.

Art. 9. Les bateaux de pêche non pontés et tous les autres bateaux également non pontés ne sont pas tenus de porter les feux de côté exigés pour les autres navires ; mais ils doivent, s'ils ne sont pas pourvus de semblables feux, se servir d'un fanal muni sur l'un de ses côtés d'une glissoire verte, et sur l'autre d'une glissoire rouge, de façon qu'à l'approche d'un navire ils puissent montrer ce fanal en temps opportun pour prévenir l'abordage, en ayant soin que le feu vert ne puisse être aperçu de bâbord, et le feu rouge de tribord.

Les navires de pêche et les bateaux non pontés qui sont à l'ancre, ou qui ayant leurs filets dehors sont stationnaires, doivent montrer un feu blanc.

Ces mêmes navires et bateaux peuvent, en outre, faire usage d'un feu visible à de courts intervalles, s'ils le jugent convenable.

Signaux en temps de brume.

Art. 10. En temps de brume, de jour comme de nuit, les navires font entendre les signaux suivants toutes les cinq minutes au moins, savoir :

- (a.) Les navires à vapeur en marche, le son du sifflet à vapeur qui est placé en avant de la cheminée à une hauteur de 2^m.40 au-dessus du pont des gaillards :
- (b.) Les bâtiments à voiles, lorsqu'ils sont en marche, font usage d'un cornet :
- (c.) Les bâtiments à vapeur et à voiles, lorsqu'ils ne sont pas en marche, font usage d'une cloche.

Règles relatives à la route.

Art. 11. Si deux navires à voiles se rencontrent courant l'un sur l'autre, directement ou à-peu-près, et qu'il y ait risque d'abordage, tous deux viennent sur tribord, pour passer à bâbord l'un de l'autre.

Art. 12. Lorsque deux navires à voiles font des routes qui se croisent et les exposent à un abordage, s'ils ont des amures différentes, le navire qui a les amures à bâbord manœuvre de manière à ne pas gêner la route de celui qui a le vent de tribord ; toutefois, dans le cas où le bâtiment qui a les amures à bâbord est au plus près, tandis que l'autre a du large, celui-ci doit manœuvrer de manière à ne pas gêner le bâtiment qui est au plus près. Mais, si l'un des deux est vent arrière ou s'ils ont le vent du même bord, le navire qui est vent arrière ou qui aperçoit l'autre sous le vent manœuvre pour ne pas gêner la route de ce dernier navire.

Two ships
under steam
meeting.

Art. 13. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Two ships
under steam
crossing.

Art. 14. If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other.

Sailing ship and
ship under
steam.

Art. 15. If two ships, one of which is a sailing ship and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

Ships under
steam to slacken
speed.

Art. 16. Every steam ship when approaching another ship so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse; and every steam ship shall, when in a fog, go at a moderate speed.

Vessels over-
taking other
vessels.

Art. 17. Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel.

Construction of
Articles 12, 14,
15, and 17.

Art. 18. Where by the above rules one of two ships is to keep out of the way, the other shall keep her course, subject to the qualifications contained in the following article.

Proviso to save
special cases.

Art. 19. In obeying and construing these rules due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger.

No ship under
any circum-
stances to
neglect proper
precautions.

Art. 20. Nothing in these rules shall exonerate any ship or the owner or master or crew thereof from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Art. 13. Si deux navires sous vapeur se rencontrent courant l'un sur l'autre, directement ou à-peu-près, et qu'il y ait risque d'abordage, tous deux viennent sur tribord, pour passer à bâbord l'un de l'autre.

Art. 14. Si deux navires sous vapeur font des routes qui se croisent et les exposent à s'aborder, celui qui voit l'autre par tribord manœuvre de manière à ne pas gêner la route de ce navire.

Art. 15. Si deux navires, l'un à voiles l'autre sous vapeur, font des routes qui les exposent à s'aborder, le navire sous vapeur manœuvre de manière à ne pas gêner la route du navire à voiles.

Art. 16. Tout navire sous vapeur, qui approche un autre navire de manière qu'il y ait risque d'abordage, doit diminuer sa vitesse ou stopper et marcher en arrière, s'il est nécessaire. Tout navire sous vapeur doit, en temps de brume, avoir une vitesse modérée.

Art. 17. Tout navire qui en dépasse un autre gouverne de manière à ne pas gêner la route de ce navire.

Art. 18. Lorsque, par suite des règles qui précèdent, l'un des deux bâtiments doit manœuvrer de manière à ne pas gêner l'autre, celui-ci doit néanmoins subordonner sa manœuvre aux règles énoncées à l'article suivant.

Art. 19. En se conformant aux règles qui précèdent, les navires doivent tenir compte de tous les dangers de la navigation. Ils auront égard aux circonstances particulières qui peuvent rendre nécessaire une dérogation à ces règles, afin de parer à un péril immédiat.

Art. 20. Rien dans les règles ci-dessus ne saurait affranchir un navire, quel qu'il soit, ses armateurs, son capitaine ou son équipage, des conséquences d'une omission de porter des feux ou signaux, d'un défaut de surveillance convenable, ou, enfin, d'une négligence quelconque des précautions commandées par la pratique ordinaire de la navigation ou par les circonstances particulières de la situation.

D I A G R A M S

TO ILLUSTRATE THE USE

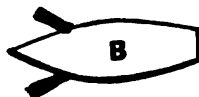
OF THE LIGHTS CARRIED BY VESSELS AT SEA,

And the manner in which they indicate to the vessel which sees them the position and description of the vessel that carries them.



When both red and green lights are seen :

A sees a red and green light ahead ;—A knows that a vessel is approaching her on a course directly opposite to her own, as B ;



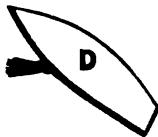
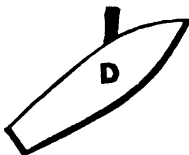
If A sees a white mast-head light above the other two, she knows that B is a steam-vessel.

When the red, and not the green light, is seen :

A sees a red light ahead or on the bow ;—A knows that either, 1, a vessel is approaching her on her port bow, as B ;



or, 2, a vessel is crossing in some direction to port, as D D D.



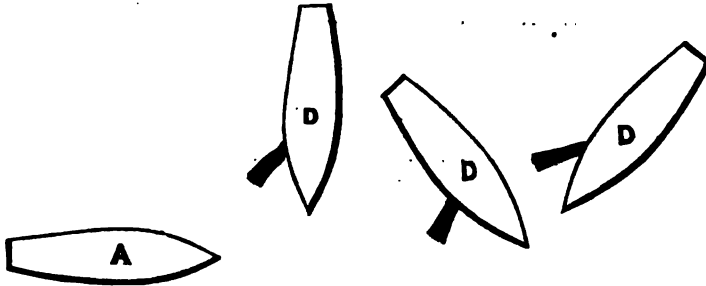
If A sees a white mast-head light above the red light, A knows that the vessel is a steam-vessel, and is either approaching her in the same direction, as B, or is crossing to port in some direction, as D D D.

When the green, and not the red light, is seen :

A sees a green light ahead or on the bow ;—A knows that either,
1, a vessel is approaching her on her starboard bow, as B ;



or, 2, a vessel is crossing in some direction to starboard, as D D D.



If A sees a white mast-head light above the green light, A knows that the vessel is a steam-vessel, and is either approaching her in the same direction, as B, or is crossing to starboard in some direction, as D D D. ●

INSTRUCTIONS TO RECEIVERS OF WRECK.

SALVAGE CASES.—*Fees and Costs.*

A SCALE of FEES and COSTS allowed in pursuance of the 25 & 26 Vict. c. 63, s. 49, by the Right Honourable Sir George Grey, Baronet, one of Her Majesty's Principal Secretaries of State, to be awarded in salvage cases by Justices of the Peace or Courts lawfully authorized to hear and determine such cases in a summary manner.

Fees to Assessors and Umpires.

	£	s.	d.
To assessors, for each day's attendance and service in every case in which his assistance shall have been duly required	1	1	0
To an umpire, when duly appointed by justices under section 461 of 17 & 18 Vict. c. 104, for his service as such, for each day's employment	1	1	0

Provided the total sum allowed to such assessor and umpire respectively shall in no instance exceed the sum stated in section 462 of 17 & 18 Vict. c. 104.

Fees to be paid to the Clerks of Justices or Stipendiary Magistrates in England and Wales.

And if the above-mentioned cases be heard by the Judge of a County Court in England, a sheriff or his substitute in Scotland, or the Recorder of a Borough, or chairman of Quarter Sessions in Ireland, to be paid to the registrar or clerk of such Court, or to any other person acting in a like capacity.

	£	s.	d.
Convening justices and assessors and umpire to hear a case of salvage— for each person convened.....	0	2	0
Notices to parties to the inquiry, of time of hearing a case.....	0	2	0
Summons (and duplicate) to each witness, if required	0	2	0
To person serving a notice or summons.....	0	1	0
Taking written examination of witnesses, per folio	0	0	8
Copy of such evidence (if required) .....ditto.....	0	0	2
Preparing award	0	0	8
Fair copy of same	0	0	2
Attending justices, and, if necessary, also assessor and umpire, for their several signatures, a total sum of	0	5	0
Writing letters specially directed to be written by the justices or umpire, each letter	0	2	0

Fees to Witnesses.

Seamen and others of same class, for each full day's attendance.....	0	3	6
For any less time of attendance	0	2	0
Master mariners, pilots, engineers, and all other witnesses, for each full day's attendance	0	5	0
For any less time of attendance	0	3	0

NOTE.—Travelling expenses, such as are fair and moderate, and have been actually paid, to be allowed, but the sum not to exceed threepence per mile each way in going to and returning from the place of meeting; and all witnesses attending before justices and Courts, whose usual place of abode is distant more than five miles from the place of meeting, and who may be necessarily detained there more than one day, to be allowed no greater sum for each night they may be so necessarily detained than

0 1 6

Fees to Practitioners.

If any attorney be employed to conduct the inquiry, &c., he shall receive for each day's service	1	1	0
(But no fee shall be paid to him for more than two days' attendance in any case.)			

I hereby, pursuant to the act 25 & 26 Vict. c. 63, s. 49, paragraph 7, determine that the foregoing scale of costs shall be awarded in salvage cases by the justices or Court by whom jurisdiction is exercised in salvage cases under the said act.

(Signed) G. GREY.

Whitehall,
14th May, 1863.

**FORMS, ORDERS IN COUNCIL,
SCALES OF BOATS, WATER CASKS, AND MEDICINES,
RELATING TO PASSENGER SHIPS.**

Form of Passengers List.

Ship's Name.	Master's Name.	Tons per Register.	Aggregate Number of Superficial Feet in the several Compartments set apart for Passengers other than Cabin Passengers.	Total Number of Statute Adults, exclusive of Master, Crew and Cabin Passengers, which the Ship can legally carry.	Where bound.

I hereby certify, that the provisions actually laden on board this ship are sufficient, according to the requirements of the Passengers Act, for statute adults for a voyage of days.

Dated 186 .

(Signature) Master.

Names and Descriptions of Passengers.

Ports of Embarka-tion.	Names of Pas-sen-gers.	Age of each Adult of 12 Years and upwards.				Children between 1 and 12 Years.		Infants.		Pro-fession, Occu-pation, or Calling of Pas-sen-gers.	State whether English, Scotch, or Irish.	Port at which Pas-sen-gers have con-tracted to land.
		Married.		Single.								
		Male.	Female.	Male.	Female.	Male.	Female.	Male.	Female.			

Summary.

					Number of Souls.				Equal to Statute Adults.
					English.	Scotch.	Irish.	Total.	
Adults					
Children between 1 and 12					
Infants					
Total					

We hereby certify, that the above is a correct list of the names and descriptions of all the passengers who embarked at the port of (Signed)

(Countersigned)

Master.
Emigration Officer.
Officer of Customs at .

Dated 186 .

N.B.—Lines should be ruled in the same form for any additions to the list after the ship first clears out ; and similar certificates be subjoined to such additions according to the requirements of the act.

*Form of Bond to be given by the Master and by the Owner or Charterer of
a "Passenger Ship."*

(a) Insert here the christian and surnames in full, with occupations and addresses of each of the two obligors.

(b) By s. 17 of the 36 & 37 Vict. c. 51, the bond must be for 5,000*l.*, where neither the owners nor the charterer reside in the United Kingdom, and must contain an additional condition. See *note*, p. 527.

(c) The clause within brackets is to be inserted only when the ship is to call at an intermediate port to take in water as provided by s. 34 of the act.

(d) This clause to be inserted only in the case of a foreign passenger ship proceeding to any of the British Colonies.

(e) Insert names and addresses in full of the witnesses.

(f) Certificate to be signed by the chief officer of customs and forwarded with the bond to the colony, according to s. 64 of the act.

Know all men by these presents, that we (a) are held and firmly bound unto our Sovereign by the grace of God of the United Kingdom of Great Britain and Ireland defender of the faith, in the sum of two thousand pounds (b) of good and lawful money of Great Britain, to be paid to our said the heirs and successors; to which payment well and truly to be made we bind ourselves and every of us, jointly and severally, for and in the whole, our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of one thousand eight hundred and sixty

Whereas by the "Passengers Act, 1855," it is amongst other things enacted, that, before any "passenger ship" shall clear out or proceed to sea, the master, together with the owner or charterer of the ship, or in the absence of such owner or charterer, or if the master be the owner or charterer, one other good and sufficient person, to be approved by the chief officer of customs at the port of clearance, shall enter into a bond to Majesty, heirs and successors, in the sum of two thousand pounds:

Now the condition of this obligation is such, that if the ship whereof the above-bounden is master, bound to is in all respects seaworthy, (c) [and if the said ship shall call at the port of and there shall be shipped on board at such port pure water for the use of the passengers, sufficient in quantity to afford an allowance of three quarts daily to each statute adult for the period of days on the voyage from such port to the final port or place of discharge of such vessel,] and if (notwithstanding any penalty by the said act imposed, and whether the same may have been sued for and recovered or not,) all and every the requirements of the said "Passengers Act, 1855," (except such of them as relate exclusively to passage brokers and runners,) and of the emigration commissioners acting in the manner prescribed by the said act, and of any order passed by her Majesty in Council relating to "passenger ships" and now in force, shall in all respects be well and truly performed (d) [and if the master for the time being of the said ship shall submit himself, in like manner as a British subject being the master of a British passenger ship, to the jurisdiction of the tribunals in Majesty's possessions abroad, empowered by the said act to adjudicate on offences committed against the said act], and if moreover all penalties, fines, and forfeitures which the master of such ship may be adjudged to pay for or in respect of the breach or nonfulfilment of any of such requirements as aforesaid shall be well and truly paid, and if all expenses incurred by the secretary of state or any governor or British consular officer under the provisions of this act shall also be well and truly paid, then this obligation to be void, otherwise to remain in full force and virtue.

Signed, sealed and delivered by the above-bounden and in the presence of (e).

(f) [I hereby certify, that the above bond was duly signed, sealed and delivered according to the law of Great Britain by the said master of the said ship and by the said (other obligor)].

(Signature) } Chief Officer of Customs for the port
of

(Date) 186 .

*Specification of Water Casks, suitable for Passenger Ships,
of various Sizes.*

Note.—The staves should be white oak; the heading yellow pine, pitch pine, or oak. If pine, the sap wood should be taken off, and oak cantles be used. The hoops should be according to the above specification, or of equal substance. The casks should be all gauged, and the contents marked on the bung stave of each.

**ORDERS IN COUNCIL *respecting Apparatus for distilling Water,
and defining Quantity of Fresh Water to be carried.***

At the Court at Buckingham Palace, the 6th day of May, 1857 :

Present,—The Queen's most excellent Majesty in Council.

WHEREAS by the "Passengers Act, 1855" it is amongst other things enacted, that, before any passenger ship shall be cleared out, the emigration officer, at the port of clearance, shall satisfy himself that there is on board a sufficient quantity of pure water, carried in tanks or casks, to secure, throughout the intended voyage, the issue of three quarts daily to each statute adult for the use of the passengers, exclusive of the quantity required for cooking ; and whereas it is also enacted, that it shall be lawful for her Majesty, by any Order in Council, to prescribe such rules and regulations as to her Majesty may seem fit, for permitting the use on board of passenger ships of an apparatus for distilling water, and for defining, in such case, the quantity of fresh water to be carried in tanks or casks for the passengers.

Now, therefore, her Majesty doth, by and with the advice of her Privy Council, and in pursuance and in exercise of the authority vested in her by the said "Passengers Act, 1855," hereby order as follows :

Any "passenger ship" propelled wholly by steam engines of not less power than is sufficient, without the aid of sails, to propel the ship at the rate of five statute miles an hour, may be cleared out and proceed on her voyage having on board, in tanks or casks, only half the quantity of pure water required by the said act to be carried for the use of the passengers ; provided,

1. That there be on board such passenger ship an efficient apparatus, to be approved by the emigration officer at the port of clearance, for distilling fresh water from salt water ;
2. That the owners, charterers, or masters of the ship, before clearance, lodge with such emigration officer a certificate from the engineer or surveyor of the Board of Trade, or other competent person to be named by the emigration officer, declaring that the apparatus has been, within the seven days immediately preceding the date of such certificate, examined by a competent person, and is then in good working condition, and stating the number of imperial gallons of pure fresh water which it is capable of producing in every twenty-four hours ;
3. That the emigration officer is satisfied that this number of gallons is not less than the whole number of persons about to proceed on the intended voyage of such ship ; that is to say, the whole number of cabin passengers, passengers, and crew ;
4. That there is rated on the ship's articles, and on board the ship, some person who, to the satisfaction of the said emigration officer, shall be competent for the proper management of such distilling apparatus.

And to prevent all doubts on the construction of this Order in Council, it is hereby further ordered, that the terms "passenger ship," "emigration officer," "statute adult," and "master," shall herein have the same significations as are assigned to them respectively in the said "Passengers Act, 1855."

And the Right Honourable Henry Labouchere, one of her Majesty's principal secretaries of state, is to give the necessary directions herein accordingly.

WM. L. BATHURST.

At the Court at Buckingham Palace, the 13th day of May, 1859 :

Present,—The Queen's most excellent Majesty in Council.

WHEREAS by the "Passengers Act, 1855," it is amongst other things enacted, that, before any passenger ship shall be cleared out, the emigration officer, at the port of clearance, shall satisfy himself that there is on board a sufficient quantity of pure water, carried in tanks or casks, to secure, throughout the intended voyage, the issue of three quarts daily to each statute adult for the use of the passengers, exclusive of the quantity required for cooking ; and whereas it is also enacted, that it shall be lawful for her Majesty, by any Order in Council, to prescribe such rules and regulations as to her Majesty may seem fit, for permitting the use on board passenger ships of an apparatus for distilling water, and for defining, in such case, the quantity of fresh water to be carried in tanks or casks for the passengers.

Now, therefore, her Majesty doth, by and with the advice of her Privy Council, and in pursuance and in exercise of the authority vested in her by the said "Passengers Act, 1855," hereby order as follows :

Any passenger ship may be cleared out and proceed on her voyage having on board, in tanks or casks, only half the quantity of pure water required by the said act to be carried for the use of the passengers ; provided,

1. That there be on board such passenger ship an efficient apparatus for distilling fresh water from salt water, of the description commonly known as Normandy's Patent, or of such other description as may, with the sanction of one of her Majesty's principal secretaries of state, be notified in the *London Gazette* as having been approved by the emigration commissioners ;
2. That the owners, charterers, or masters of the ship, before clearance, lodge with such emigration officer a certificate from some competent person to be named by the emigration officer, declaring that the apparatus is of one of the descriptions above specified, and that it has been, within the seven days immediately preceding the date of such certificate, examined by a competent person, and is then in good working condition, and stating the number of imperial gallons of pure fresh water which it is capable of producing in every twenty-four hours ;
3. That the emigration officer is satisfied that this number of gallons is not less than the whole number of persons about to proceed on the intended voyage of such ship ; that is to say, the whole number of cabin passengers, passengers, and crew ;
4. That there is rated on the ship's articles, and on board the ship, some person or persons who, to the satisfaction of the said emigration officer, shall be competent for the proper management and repair of such distilling apparatus.

And to prevent all doubts on the construction of this Order in Council, it is hereby further ordered, that the terms "passenger ship," "emigration officer," "statute adult," and "master," shall herein have the same significations as are assigned to them respectively in the said "Passengers Act, 1855."

And the Right Honourable Sir Edward Bulwer Lytton, Bart., one of her Majesty's principal secretaries of state, is to give the necessary directions herein accordingly.

WM. L. BATHURST.

List of SURGICAL and MIDWIFERY INSTRUMENTS which the Surgeon of a Passenger Ship should possess.

A pocket dressing-case, containing scalpel, two bistouries (blunt-pointed and sharp), gum-lancet, tenaculum, forceps, spatula, scissors, two probes, silver director, caustic-case, curved needles of different sizes.

Lancet-case with at least four lancets.—Case of tooth instruments.—Midwifery forceps and trachea tube.—Set of silver and gum elastic catheters, including female catheter and some bougies.—One amputating knife and catlin, one amputating saw, one Hey's saw, tourniquet.—Silk of different sizes for ligatures and sutures.

Desirable Additions.

Cupping apparatus.—Trocar and canula.—Trepine and elevator.—Craniotomy forceps, perforator, and blunt hook.

N.B. The surgeon should be provided with the British Pharmacopœia.

SCALE OF MEDICINES for every 100 Passengers in "Passenger Ships," where the length of the Voyage computed according to the Passengers Act is 100 Days and upwards. The Medicines are to be prepared according to the British Pharmacopœia.

List of Medicines, &c. required for every 100 Persons.—All the Volatile Medicines and Acids to be put in Stopper Bottles. Before the Extracts are placed in the Jars they are to be wrapped in Bladder or Oil Silk.

lb. oz.		lb. oz.	
0 4	Acid Acetic.	0 8	Liquor Ammon.
0 1	" Citric.	0 2	" Potassæ.
0 1	" Gallici.	0 8	" Plumbi subacet.
0 1	" Hydrocyanic. Dil. Ph.	15 0	Magnesiæ Sulph.
	Brit., marked "POISON."	0 4	" Carb.
0 1	" Hydrochlor. Dil.	0 ½	Morphiæ Hydrochlor.
	} Carefully packed in a small case with sand.	0 8	Ol. Lini.
0 1	" Nitric. Dil.	0 1	" Menth. Pip.
0 3	" Sulph. Dil.	2 0	" Olivæ.
0 12	" Tartaric.	4 0	" Ricini Opt.
0 4	Ammon. Carb.	1 0	" Terebinth.
0 8	" Hydrochlor.	0 ½	" Croton.
1 0	Amylum.	0 8	Oxymel Scillæ.
0 ½	Antimon. Tartra.		Ol. Morrhuæ, 1 gal.
0 ½	Argenti Nitras.	0 1	Pil. Calomel Comp.
0 1	Borax.	0 4	Pil. Hydrarg.
0 2	Calomelas.	0 4	Plumbi Acetas.
1 0	Calx.—in stop. bott.	0 4	Potassæ Bicarb.
0 4	Camphor.	0 2	" Iodidum.
0 6	Chloroform—in stop. bott.	0 8	Pulv. Acaciæ Gummi.
0 8	Conf. Sennæ.	0 8	" Aluminis exsic.
0 8	Copaibæ.	0 3	" Aromat.
0 ½	Creosoti.	0 1	" Cretæ Arom.
0 ½	Cupri Sulph.	1 0	" " Prep.
0 4	Emplas. Cantharidis.	0 1	" Ipecac.
0 2	" Resinæ.	0 2	" " c. Opio.
0 ½	Ext. Aloes.	0 3	" Jalapæ.
0 1	" Belladonnæ.	0 2	" Kino c. Opio.
0 3	" Coloc. Comp.	0 ½	" Opil.
0 ½	" Conii.	0 4	" Potassæ Nitrat.
0 ½	" Hyoscyam.	0 8	" " Tartrat. Acid.
0 ½	Ferri Iodidum.	0 3	" Rhæi.
0 ½	" et Quin. Citras.	0 ½	" Scammonii Comp.
0 1	" Sulph.	0 1	" Scillæ.
0 4	Gentianæ Radix.	0 2	" Ergotæ—in stop. bott.
0 1	Hydrarg. c. Cretâ.	0 1	" Zingiberis.
0 8	Liniment: Saponis.	0 1	Quinæ Sulph.

lb. oz.
 0 ½ Saponis Dur.
 0 8 Sennæ Fol.
 0 12 Sodæ Bicarh.
 0 8 " et Potassio-tart.
 0 4 Sp. Ether.
 0 4 " Nitrosi.
 0 8 " Ammon. Arom.
 0 8 " Tenuior.
 0 8 Sulphur Sublim.
 0 2 Tinct. Arnicæ.
 0 6 " Camp. c. Opio.
 0 12 " Catechu.
 0 1 " Digitalis.
 0 4 " Ferri perchlor.
 0 4 " Hyosciam.
 0 2 " Iodi.
 0 2 " Kino.
 0 8 " Opil.
 0 12 " Rhæi.
 0 12 " Sennæ.
 0 4 " Valerianæ Ammon.
 1 0 Unguent. Cetacei.
 0 4 " Hydrarg.
 0 1 " " Nit.
 0 2 " " Ox. Rub.
 0 4 " Resinæ.
 1 0 " Sulphur.
 0 3 Vini Colchici.
 0 3 " Ipecac.
 0 2 Zinci Sulphat.
 8 0 Linseed Meal.
 2 0 Lint, Best.
 3 0 Tow, Common.
 3 0 " Fine.

3 yds. Emp. Resinæ.

4 galls. of best Chloride of Zinc, in a capped bottle.

½ cwt. Chloride of Lime.

½ cwt. Disinfecting Powder.

1 Male Syringe.

1 Female ditto.

1 2-oz. graduated Glass Measure.

1 Minim Glass.

1 Bolus Knife.

2 Dozen assorted Phials.

½ Gross Phial Corks.

3 Yds. Flannel.

6 Yds. Calico.

2 Sponges.

1 Bed Pan.

1 Paper of Pins.

1 Piece Filleting for Bandages, Bleeding.

2 Trusses for Hernia, right and left.

1 Paper of Pill Boxes.

6 Gallipots.

1 Quire of Paper for putting up Medicines.

• 1 Pair of India Rubber Sheets.

• ½ Yard of Oiled Silk.

• 1 Water Cushion (Hooper's).

• 1 Complete Set of Clive's Splints.

1 Set of straight Splints.

1 Enema Apparatus.

1 Bleeding Forringer.

1 Set Copper Scales and Weights, ¼ lb. to ½ oz.

1 Box of Small Scales and Weights.

1 Wedgwood Mortar and Pestle.

1 Wedgwood Funnel.

1 Iron Mortar and Pestle.

1 Plaster Spatula.

2 Skins of Leather.

1 Pill Tile.

1 Tin Bath, 2 ft. by 18 in.

4 Saucepans of different sizes for the exclusive use of the Hospital.

A 2-gallon Water Filter.

One Set of these Articles is required for Ships carrying less than 100 Passengers ; Two Sets for Ships carrying between 100 and 250 Passengers ; and Four Sets for Ships carrying more than 250 Passengers.

One Set only of these Articles for the Ship. • These Articles may be omitted in Ships carrying fewer than 100 Passengers.

Whenever necessary, and especially when Cholera prevails as an epidemic, the Emigration Officer will require at least three times the above quantity of Oil of Turpentine, with a supply of Cayenne Pepper and Mustard.

List of Surgical and Midwifery Instruments which the Surgeon of a Passenger Ship should possess.

A pocket dressing-case, containing scalpel, two bistouries (blunt-pointed and sharp) ; gum-lancet ; tenaculum, forceps, spatula, scissors, two probes, silver director, caustic case, curved needles of different sizes.

Lancet-case with at least four lancets.

Case of tooth instruments.

Midwifery forceps and trachea tubes.

Set of silver and gum elastic catheters, including female catheter and some bougies.

One amputating knife and catlin, one amputating saw, one Hey's saw, tourniquet.

Silk of different sizes for ligatures and sutures.

British Pharmacopœia.

Desirable Additions.

Cupping apparatus. | Trocar and canula. | Trephine and elevator.

Craniotomy forceps, perforator, and blunt hook.

SCALE OF MEDICINES for "Passenger Ships" where the Length of Voyage computed according to the Passengers Act is under 100 Days.

The Medicines are to be prepared according to the British Pharmacopœia.

MEDICINES.	1. For 100 Passengers.	2. For 200 Passengers.	3. For 300 Passengers.	4. For 400 Passengers.	5. For 500 Passengers.	6. For 600 Passengers.
Blue Pill	$\frac{1}{2}$ ounce	1 ounce	$1\frac{1}{2}$ ounce	2 ounces	$2\frac{1}{2}$ ounces	3 ounces
Calomel	$\frac{1}{2}$ "	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "
Copaiva	4 "	6 "	8 "	10 "	12 "	14 "
Carbonate of Ammonia	1 "	1 "	$1\frac{1}{2}$ "	$1\frac{1}{2}$ "	2 "	2 "
Castor Oil	4 pounds	7 pounds	10 pounds	12 pounds	14 pounds	16 pounds
Croton Oil	2 drchms	2 drchms	2 drchms	2 drchms	2 drchms	2 drchms
Creosote	2 "	3 "	4 "	4 "	4 "	4 "
Chloroform	2 ounces	3 ounces	4 ounces	5 ounces	6 ounces	7 ounces
Cream of Tartar	4 "	6 "	8 "	10 "	12 "	14 "
Chalk, Prepared	4 "	6 "	8 "	10 "	12 "	14 "
Dover's Powder	$\frac{1}{2}$ "	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "
Epsom Salts	8 pounds	12 pounds	16 pounds	20 pounds	24 pounds	28 pounds
Ipecacuanha, in powder	$\frac{1}{2}$ ounce	1 ounce	$1\frac{1}{2}$ ounce	2 ounces	$2\frac{1}{2}$ ounces	3 ounces
Jalap, in powder	2 "	$2\frac{1}{2}$ "	3 "	$3\frac{1}{2}$ "	4 "	$4\frac{1}{2}$ "
Laudanum	4 "	6 "	8 "	10 "	12 "	14 "
Lunar Caustic	2 drchms	3 drchms	4 drchms	4 drchms	4 drchms	4 drchms
Magnesia, Carbonate	$\frac{1}{2}$ ounce	1 ounce	$1\frac{1}{2}$ ounce	2 ounces	$2\frac{1}{2}$ ounces	3 ounces
Nitre, Sweet Spirit of	4 "	6 "	8 "	10 "	12 "	14 "
Ammonia, Aromatic Spirit..	3 "	4 "	5 "	6 "	7 "	8 "
Nitre	2 "	3 "	4 "	5 "	6 "	7 "
Opium, powdered	$\frac{1}{2}$ "	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "
Quinine	3 drchms	$\frac{1}{2}$ "	1 "	1 "	$1\frac{1}{2}$ "	$1\frac{1}{2}$ "
Paregoric	4 ounces	6 ounces	8 ounces	10 "	12 "	14 "
Syrup of Squills	4 "	6 "	8 "	10 "	12 "	14 "
Tincture of Iron	2 "	3 "	4 "	5 "	6 "	7 "
Spirit of Peppermint	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "	$3\frac{1}{2}$ "
Rhubarb, in powder	2 "	$2\frac{1}{2}$ "	3 "	$3\frac{1}{2}$ "	4 "	$4\frac{1}{2}$ "
Rhubarb, Tincture	6 "	8 "	10 "	12 "	14 "	16 "
Soda, Carbonate	4 "	6 "	8 "	10 "	12 "	14 "
Sugar of Lead	1 "	$1\frac{1}{2}$ "	2 "	$2\frac{1}{2}$ "	3 "	4 "
Sulphur	4 "	6 "	8 "	10 "	12 "	14 "
Sulphuric Acid, diluted	4 "	6 "	8 "	10 "	12 "	14 "
Tartaric Acid	2 "	4 "	6 "	8 "	10 "	12 "
Tartar Emetic	2 drchms	3 drchms	4 drchms	5 drchms	$5\frac{1}{2}$ drchms	6 drchms
Tincture of Catechu	8 ounces	12 ounces	16 ounces	18 ounces	20 ounces	24 ounces
Turpentine, Oil of	1 pound	2 pounds	3 pounds	4 pounds	5 pounds	6 pounds
Friar's Balsam	1 ounce	$1\frac{1}{2}$ ounce	2 ounces	$2\frac{1}{2}$ ounces	3 ounces	$3\frac{1}{2}$ ounces
Goulard's Extract	1 "	2 "	3 "	4 "	5 "	6 "
Olive Oil	4 "	6 "	8 "	10 "	12 "	14 "
Opodeldoc	8 "	12 "	16 "	18 "	20 "	22 "
Disinfecting Fluid of Chloride of Zinc	4 quarts	5 quarts	6 quarts	7 quarts	8 quarts	9 quarts
APPLICATIONS.						
Adhesive Plaster	2 yards	3 yards	4 yards	5 yards	6 yards	7 yards
Mercurial Ointment	3 ounces	4 ounces	5 ounces	6 ounces	$6\frac{1}{2}$ ounces	7 ounces
Spermaceti Ointment	3 "	4 "	5 "	6 "	7 "	8 "
Blister Plaster	2 "	3 "	4 "	5 "	6 "	7 "
Basilicon Ointment	3 "	4 "	5 "	6 "	7 "	8 "
Lint	4 "	6 "	8 "	10 "	12 "	14 "

Scale of Medicines for Passenger Ships—*continued*.

FEVER POWDER—for Adults.
R. Antim. Potass. Tart. gra. xxiv.
 Potassæ Nitr. ʒiijʒa. *Misce.*
S. Dose—Ten grains every four or six hours.

ASTRINGENT POWDER—for Adults.
R. Pulv. Cretæ Co. c. Opio. ʒiv.
S. Dose—Fifteen grains every four hours.

APERIENT POWDER—for Adults.
R. Calomelas ʒjʒa.
 P. Jalapæ Co. ʒiv. *Misce.*
S. Dose—Half a drachm to two scruples.

APERIENT PILLS—for Adults.
R. Pulv. Scammon. gra. viij.
 Ext. Colocynth. Co. ʒij.
 Hydrarg. Chlorid. gra. viij.
Misce et divide in pilulas xij.
S. Two to be taken for a dose.
 (Send out twelve dozen.)

FEVER POWDER—for Children.
R. Pulv. Antimonialis ʒij.
 Potassæ Nitr. ʒvj. *Misce.*
S. Dose—Five to eight grains, according to age.
 One to be taken every four or six hours.

ASTRINGENT POWDER—for Children.
R. Cretæ Ppt. ʒvj.
 P. Cretæ Co. c. Opio. ʒij.
 P. Cinnam. Co. ʒj.
 Hydrarg. c. Cretæ. 3ʒa. *Misce.*
S. Dose—Six to eighteen grains, according to age. One to be taken every four hours.

APERIENT POWDER—for Children.
R. Pulv. Jalapæ }
 Pulv. Scammon } *aa ʒij.*
 Pulv. Zingib. 3ʒa. *Misce.*
S. Six to fifteen grains, according to age, for a dose.

Book of directions for medicine chests.
 Set of scales and weights.
 Pestle and mortar.
 Tile.
 Enema apparatus.
 Graduated measure.
 Small cup and spoon.

Spatula.
 Lancet.
 British Pharmacopœia.
 Half dozen bandages, 5 yards long and 3 inches wide.
 Half dozen straight splints, of different sizes.

The above scale must be accurately and carefully made up of the best medicines; the bottles well corked, properly labelled, and marking the formula of each prescription. The castor oil not sent in stone jars. When the passengers exceed 600 the only extra medicine required will be half a pound of castor oil and one pound of Epsom salts for every 25 passengers.

LIST of SURGICAL and MIDWIFERY INSTRUMENTS which the Surgeon of a Passenger Ship should possess.

A pocket dressing-case, containing scalpel, two bistouries (blunt-pointed and sharp), gum-lancet, tenaculum, forceps, spatula, scissors, two probes, silver director, caustic case, curved needles of different sizes.
 Lancet case, with at least two lancets.
 Case of tooth instruments.
 Midwifery forceps.

Set of silver and gum-elastic catheters, including female catheter and some bougies.
 One amputating knife and catlin, one amputating saw, one Hey's saw, tourniquet, Liston's bone-nippers.
 Silk of different sizes for ligatures and sutures.

Desirable Additions.

Cupping apparatus. | Trocar and canula. | Trepphine and elevator.
 Craniotomy forceps, perforator, and blunt hooks.

Boat Scale.

A SCALE showing the Minimum Number and Size of Boats which the Emigration Officers in the United Kingdom will be prepared to pass for Passenger Ships in the exercise of the discretion vested in them by the 27th section of the "Passengers Act, 1855."

Registered Tonnage of Ship.	No. of Boats not less than	Sailing Vessels.		Steam Vessels.	
		Minimum Cubic Contents of Life Boats.	Minimum Cubic Contents of all the Boats of the Ship.	Minimum Cubic Contents of Life Boats.	Minimum Cubic Contents of all the Boats of the Ship.
Less than 200 tons -	2	Feet. 150	Feet. 394	Feet. 230	Feet. 614
200 and less than 400 tons - - - -	3	200	712	302	1,095
400 and less than 600 tons - - - -	4	250	1,205	330	1,462
600 and less than 800 tons - - - -	5	280	1,730	330	1,730
800 and less than 1,000 tons - - - -	5	400	2,045	330	2,045
1,000 and less than 1,250 tons - - -	6	900	2,545	900	2,545
1,250 and less than 1,500 tons - - -	6	900	3,000	900	3,000
1,500 tons and upwards	7	928	3,600	928	3,600

N.B.—The length over all \times the extreme breadth \times the inside depth amidships is to be considered as the cubic contents.

In vessels of 200 tons and upwards no boat of less than 150 feet of cubical contents is to be counted in the above number.

In vessels of 600 tons and upwards, two of the boats should be life boats. They should be as large as can be conveniently carried outboard, and built whaleboat fashion, both ends alike, and the ends to a limited extent inclosed and made air-tight. They should have a sheer of about three-fourths of an inch to the foot, and be fitted along the sides and under the thwarts with strong air-tight tubes of about ten inches diameter, diminishing to seven or six inches at the ends, and of convenient lengths, say from two to three feet each. Life lines should be fitted along the sides, and six life-belts for the crew should form part of the equipment of each life boat. The life boats should be carried at the quarters.

The boat fitted as a long-boat is to be supplied with mast and sail of any rig that may be preferred.

Every boat must be seaworthy and provided with painter, oars, boat-hooks, thole-pins, plug rudder and tiller, all of which are to be properly secured in the boats.

All the boats to be kept in good order, clear, and ready for instant use.

No greater number of boats need be taken than are sufficient, in the judgment of the emigration officer at the port of clearance, to carry all the crew and passengers on board. Fifteen cubic feet of boat may be taken as sufficient for one adult. Not more than forty adults should be allowed for any one boat.

ORDER IN COUNCIL prescribing Rules for preserving Order, promoting Health, &c., on board Passenger Ships.

At the Court at Buckingham Palace, the 25th day of February, 1856 :

Present,—The Queen's most excellent Majesty in Council.

WHEREAS by the "Passengers Act, 1855," it is amongst other things enacted, that it shall be lawful for her Majesty, by any Order in Council, to prescribe such rules and regulations as to her Majesty may seem fit for preserving order, promoting health, and securing cleanliness and ventilation on board of passenger ships proceeding from the United Kingdom to any port or place in her Majesty's possessions abroad, and the said rules and regulations from time to time in like manner to alter, amend and revoke, as occasion may require :

And whereas it is expedient to revoke an Order in Council made at a Court held at Windsor, on the 16th day of October, 1852, in virtue of the provisions of the "Passengers Act, 1852" (now repealed), and to make a new Order in Council :

Now, therefore, her Majesty doth, by and with the advice of her Privy Council, and in pursuance and exercise of the authority vested in her by the said "Passengers Act, 1855," order, and it is hereby ordered, that the said Order in Council of the 16th day of October, 1852, be and the same is hereby revoked ; and that the following shall henceforth be the rules for preserving order, for promoting health, and for securing cleanliness and ventilation, to be observed on board of every passenger ship proceeding from the United Kingdom to any port or place in her Majesty's possessions abroad out of Europe, and not being within the Mediterranean Sea :

1. All passengers who shall not be prevented by sickness or other sufficient cause, to be determined by the surgeon, or in ships carrying no surgeon, by the master, shall rise not later than 7 o'clock A.M., at which hour the fires shall be lighted ;
2. It shall be the duty of the cook or cooks, appointed under the 39th section of the said "Passengers Act, 1855," to light the fires, and to take care that they be kept alight during the day ; and also to take care that each passenger or family of passengers shall have the use of the fireplace at proper hours, in an order to be fixed by the master ;
3. When the passengers are dressed, their beds shall be rolled up ;
4. The decks, including the space under the bottom of the berths, shall be swept before breakfast, and all dirt thrown overboard ;
5. The breakfast hour shall be from 8 to 9 o'clock A.M. Before the commencement of breakfast, all the emigrants, except as hereinbefore excepted, are to be out of bed and dressed, and the beds rolled up, and the deck on which the emigrants live properly swept ;
6. The deck shall further be swept after every meal, and after breakfast is concluded shall be also dry holystoned or scraped. This duty, as well as that of cleaning the ladders, hospitals and round houses, shall be performed by a party who shall be taken in rotation from the adult males above 14, in the proportion of 5 to every 100 emigrants, and shall be considered as sweepers for the day. But the single women shall perform this duty in their own compartment, where a separate compartment is allotted to them, and the occupant of each berth shall see that his own berth is well brushed out ;
7. Dinner shall commence at 1 o'clock P.M. and supper at 6 P.M. ;
8. The fires shall be extinguished at 7 P.M., unless otherwise directed by the master or required for the use of the sick ; and the emigrants shall be in their berths at 10 o'clock P.M., except under the permission or authority of the surgeon, or, if there be no surgeon, of the master ;
9. On each passenger deck there shall be lit at dusk and kept burning till daylight, three safety lamps, and such further number as shall allow one to be placed at each of the hatchways used by passengers ;

10. No naked light shall be allowed between decks or in the hold, at any time or on any account ;
11. The scuttles and stern ports, if any, shall, weather permitting, be opened at 7 o'clock A.M. and kept open till 10 o'clock P.M. ; and the hatches shall be kept open whenever the weather permits ;
12. The coppers and cooking utensils shall be cleaned every day, and the cisterns kept filled with water ;
13. The beds shall be well shaken and aired on deck, weather permitting, at least twice a week ;
14. The bottom boards of the berths, if not fixtures, shall be removed and dry-scrubbed, and, weather permitting, taken on deck, at least twice a week ;
15. Two days in the week shall be appointed by the master as washing days ; but no washing or drying of clothes shall on any account be permitted between decks ;
16. On Sunday mornings the passengers shall be mustered at 10 o'clock A.M., and will be expected to appear in clean and decent apparel. The Lord's Day shall be observed as religiously as circumstances will admit ;
17. No spirits or gunpowder shall be taken on board by any passenger ; and if either of those articles be discovered in the possession of a passenger, it shall be taken into the custody of the master during the voyage, and not returned to the passenger until he has landed or is on the point of landing ;
18. No loose hay or straw shall be allowed below for any purpose ;
19. No smoking shall be allowed between decks ;
20. All gambling, fighting, riotous, disorderly or quarrelsome conduct, swearing, and violent or indecent language, are strictly prohibited ;
21. Fire-arms, swords and other offensive weapons shall, as soon as the passengers embark, be placed in the custody of the master ;
22. No sailors shall be allowed to remain on the passenger deck among the passengers, except on duty ;
23. No passenger shall go to the ship's cookhouse without special permission from the master, nor remain in the fore-castle among the sailors on any account ;
24. In vessels not expressly required by the said " Passengers Act, 1855," to have on board such ventilating apparatus as therein mentioned, such other provision shall be made for ventilation as shall be required by the emigration officer at the port of embarkation, or, in his absence, by the officers of customs ;
25. And to prevent all doubts in the construction of this Order in Council, it is hereby further ordered, that the terms " United Kingdom," " passenger," " passenger ship," " passenger deck " and " master " shall herein have the same significations as are assigned to them respectively in the said " Passengers Act, 1855 ;"

And the Right Honourable Henry Labouchere, one of her Majesty's principal secretaries of state, is to give the necessary directions herein accordingly.

WM. L. BATHURST.

Form of Passage Broker's Annual Bond, with Two Sureties, to be approved by the Emigration Officer at the nearest Port.

Know all men by these presents, that we, *A. B.* (a) of *C. D.* of, *etc.* and *E. F.* of, *etc.* are held and firmly bound unto our Sovereign by the grace of God of the United Kingdom of Great Britain and Ireland defender of the faith, in the sum of one thousand pounds of good and lawful money of Great Britain, to be paid to our said the heirs and successors; to which payment well and truly to be made we bind ourselves and every of us, jointly and severally, for and in the whole, our heirs, executors, and administrators, and every of them, firmly by these presents. Sealed with our seals. Dated this day of one thousand eight hundred and sixty

(a) Insert christian and surnames in full, with occupations and addresses of each of the parties.

Whereas by the "Passengers Act, 1855," it is amongst other things enacted, that no person whatever, save as therein excepted, shall directly or indirectly act as a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, or shall sell or let, or agree to sell or let, or be in anywise concerned in the sale or letting of passages in any ship, whether a "passenger ship" or otherwise, proceeding from the United Kingdom to any such place as aforesaid, unless such person, with two good and sufficient sureties, to be approved by the emigration officer at the port nearest the place of business of such person, shall have previously entered into a joint and several bond to her Majesty, her heirs and successors, in the sum of one thousand pounds: And whereas the said *C. D.* and *E. F.* have been duly approved by the proper emigration officer as sureties for the said *A. B.*:

Now the condition of this obligation is such, that if the above-bounden *A. B.*, and every agent whom he may employ in his business of a passage broker, shall well and truly observe and comply with all the requirements of the said recited act, so far as the same relate to passage brokers, and further shall well and truly pay all fines, forfeitures, and penalties, and also all sums of money, by way of subsistence money, or of return of passage money and compensation, to any passenger, or on his account, together with all costs which the above-bounden *A. B.*, or any of his agents as aforesaid, may at any time be adjudged to pay under or by virtue of any of the provisions of the said recited act, then and in such case this obligation to be void, otherwise to remain in full force.

Signed, sealed and delivered by the above-bounden *A. B.*, *C. D.*, and *E. F.*, in the presence of (b).

(b) Insert the names and addresses in full of the witnesses.

N.B.—This bond is to be executed in duplicate, in the presence of and to be attested by an emigration officer or his assistant, or an officer of customs, or a magistrate, or a notary public. One part is to be deposited with the emigration commissioner in London, and the other part with the emigration officer at the port nearest to the place of business of the broker. Each member of a firm or partnership who acts as a passage broker must give a separate bond with two sureties.

[The bond is exempt from stamp duty, but must be renewed annually with licence.]

*Form of Passage Broker's Licence.**

(a) The christian and surnames in full, with the address and trade or occupation of the party applying for the licence, must be correctly inserted. If a member of a firm, the christian and surnames of all the members must be given.

A. B. (a) of _____ in the _____ having shown to the satisfaction of me [or us] the undersigned, that he hath given bond to _____ Majesty, as by the "Passengers Act, 1855," required, and also given fourteen days' previous notice to the emigration commissioners of his intention to make application for a licence to carry on the business of a passage broker in respect of passages from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea, I [or we], the undersigned, having had no sufficient cause shown to me [or us], and seeing no valid reason why the said *A. B.* should not receive such licence, do hereby license and authorize the said *A. B.* to carry on the business of a passage broker as aforesaid until the end of the present year, and thirty-one days afterwards, unless this licence shall be sooner determined by forfeiture for misconduct on the part of the said *A. B.* as in the "Passengers Act, 1855," is provided.

Given under my hand and seal [or our respective hands and seals], this day of _____, 186____, at _____.

Signature

(L.S.)

} Justices of the Peace, Police or Stipendiary Magistrate, or Sheriff or Steward, or Sheriff or Steward Substitute [as the case may be].

* N.B.—Each member of a firm or partnership who acts as a passage broker must have a separate licence.

Form of Notice to be given to the Emigration Commissioners by Justices granting a Licence.

Gentlemen,

(b) Insert the christian and surnames in full, with the address and occupation of the party.

This is to give you notice, That we [or I], the undersigned, did on the _____ day of _____ 186____, license *A. B.* of (b) _____ to carry on the business of a passage broker under the provisions of the "Passengers Act, 1855."

Signatures

} Justices of the Peace [or as the case may be].

Place

Date

To the Emigration Commissioners, }
London. }

Form of Notice to be given to the Emigration Commissioners by any Applicant for a Passage Broker's Licence.

Gentlemen,
I, A. B. (a) of in do hereby give you notice, that it is my intention to apply, after the expiration of fourteen clear days from the putting of this notice into the post, to the justices to be assembled in petty sessions to be held (b) [or to the police or stipendiary magistrate for the city, or borough or district of or, if in Scotland, to the sheriff or steward of as the case may be,] for a licence to carry on the business of a passage broker under the provisions of "The Passengers Act, 1855."

(a) The christian and surnames in full, with the address and trade or occupation of the party applying for a licence, must be here correctly inserted.

(b) The place or district in which the party giving the notice has his place of business.

Signature

Date

To the Emigration Commissioners, }
London. }

Form of Notice to be given by the Justices to the Emigration Commissioners of Forfeiture of a Passage Broker's Licence.

Gentlemen,
This is to give you notice, That the licence granted on the day of 186 to A. B. (c) of in to act as a passage broker, was on the day of now last past duly declared by me [or us] the undersigned justices of the peace in petty sessions assembled, to be forfeited (d).

(c) The christian and surnames in full, with the address and trade or occupation of the party to be here inserted.

(d) Here state generally the reason of forfeiture.

Signatures

Place and date

186 .

To the Emigration Commissioners, }
London. }

Form of Appointment of Passage Broker's Agent.

I, A. B., of, &c [or as the case may be] one of the partners and on behalf of the firm of, &c. [name all the partners and the style of the firm] carrying on the business of at , do hereby nominate and appoint you, C. D. of, &c., to act as my agent and on my behalf in the sale or letting of passages and otherwise in the business of a passage broker, according to the provisions of "The Passengers Act, 1855."

DIRECTIONS.

Insert in the proper places the christian and surnames in full, with the correct addresses and designations of the constituent and agent respectively.

Signature in full

Place and date

186 .

Counter Signature

{ Emigration Officer at the
{ Port of .

CABIN PASSENGER'S CONTRACT TICKET.

These directions, and the "Notice to passengers" below, form part of, and must appear on, each contract ticket.

[illegible]

Names.	No. of Persons.		Total No. of persons.
	Adults above 15 years.	Children 15 years and under.	

Signature in full
Place and date
[If signed by a broker or agent, state on whose behalf.]

Deposit \$ _____, to be paid at

NOTICE TO CABIN PASSENGERS.

1. If cabin passengers, through no default of their own, fail to obtain a passage in this ship, and on the day named in this contract ticket, they may obtain redress for breach of contract by summary process under the 73rd section of the "Passenger Act, 1963."

5. Cabin passengers must produce, on demand, their contract tickets to the Government Immigration Officer under a penalty not exceeding £10. This ticket should therefore be preserved and kept in readiness to be produced on board the ship. M. 2.—This contract ticket is exempt from stamp duty.

COMMUNIST OR CATHOLIC PASSENGER'S CONTRACT TICKET.

This counterpart is to be produced by the Owner, Charterer, or Master of the Ship to the Emigration Officer at the Port of Embarkation (or, if no such Officer, to the Officer of Customs), or to any one appointed by him to receive it, under a Penalty for Default not exceeding £10.

These directions form part of, and must appear on, each contract ticket.

4. The day of the month on which the ship is to sail must be inserted in words and not in figures only.

No. of Persons.	I hereby agree with the person named in the margin hereof that such person shall be provided with class cabin passage in the above-named
-----------------	--

Ship of _____ tons register, to sail from _____ for _____ on the _____ day of _____ 1886.

In consideration of the sum of \$ _____

Names.	No. of Persons.	
	Adults above 15 years.	Children 15 years and under.
Total No. of persons.	}	}

the sum of £ in full payment of such passage money.

Signature in full

If signed by a broker or agent, state on whose behalf: _____

Deposit & Balance & , to be held at

W.B.—This contract ticket is exempt from stamp duty.

PASSENGER'S CONTRACT TICKET.

Ship
Counterpart of Passenger's Contract Ticket.

This part of the contract ticket is to be separated from the other, and to be delivered by the passenger to the emigration officer at the port of embarkation, (or, if no such officer, to the officer of customs,) or to any one appointed by him to receive it, under a penalty not exceeding £10.

CONTRACT TICKET.

I engage that the persons mentioned below shall be provided with a steerage passage to and be landed at the port of in the ship of tons with not less than ten cubic feet for luggage for each statute adult, and shall be victualled during the whole voyage according to the dietary scale prescribed by law. The ship to receive her passengers at on the day of 186 . Passage money, including government dues, if any, and all charges of landing, £ .

Names.	Ages.

* souls, equal to statute adults.

To be signed
in full by the
party issuing
the ticket.

* Insert number of souls and of statute adults respectively.

These directions, and the "Notices to passengers" below, form part of, and must appear on, each contract ticket.

1. A contract ticket in this form must be given to every passenger engaging a passage from the United Kingdom to any place out of Europe, and not being within the Mediterranean Sea.

2. The victualling scale for the voyage must be printed in the body of the ticket.

3. All the blanks must be correctly filled in, and the ticket must be legibly signed with the christian names and surname and address in full of the party issuing the same.

4. The day of the month on which the passengers are to embark must be inserted in words and not in figures.

5. When once issued, this ticket must not be withdrawn from the passenger, nor any alteration, addition, or erasure made in it.

Ship of
for on the

Names.	Ages.	Equal to Statute Adults.

tons register, to take in passengers at day of 186 .

I engage that the person named in the margin hereof shall be provided with a steerage passage to, and shall be landed at, the port of in the ship with not less than ten cubic feet for luggage for each statute adult, and shall be victualled during the voyage and the time of detention at any place before its termination, according to the subjoined scale, for the sum of £ including government dues before embarkation, and head money, if any, at the place of landing, and every other charge, except freight for excess of luggage beyond the quantity above specified, and I hereby acknowledge to have received the sum of £ in { full } payment.

The following quantities, at least, of water and provisions (to be issued daily), will be supplied by the master of the ship, as required by law, viz., to each statute adult three quarts of water daily, exclusive of what is necessary for cooking the articles required by the Passengers Act to be issued in a cooked state; and a weekly allowance of provisions according to the following scale:

[Here insert the victualling scale intended to be used on the voyage. This must be either the scale prescribed in the 35th section of the Passengers Act, 1855, or that scale modified by the introduction of articles authorized by the act to be substituted for oatmeal, rice, and potatoes.]

[N.B.—If mess utensils and bedding are to be provided by the ship, the stipulation must be inserted here.]

Signature in full

Place and date

[If signed by a broker or agent, state on whose behalf.]

Deposit £

Balance £

Total £

to be paid at

NOTICES TO PASSENGERS.

1. If passengers, through no default of their own, are not received on board on the day named in their contract tickets, or fail to obtain a passage in the ship, they should apply to the government emigration officer at the port, who will assist them in obtaining redress under the Passengers Act.

2. Passengers should carefully keep this part of their contract ticket till after the end of the voyage.

N.B.—This contract ticket is exempt from stamp duty.

Form of Emigrant Runner's Annual Licence.

(a) The christian and surnames in full, with the address of the party applying for the licence, must be here correctly inserted.

(b) City, town, or district in which the emigrant runner is to carry on his business.

A. B. (a) of _____ in the _____ having made application in writing to us, the undersigned justices of the peace assembled in petty sessions, for the (b) of _____ to grant to him a licence to enable him to be registered as an emigrant runner in and for (b) _____, and the said [*A. B.*] having also been recommended as a proper person to receive such licence by an emigration officer, or by the chief constable [or other head officer of police, as the case may be] of _____ [the district, town or place in which the said *A. B.* is to carry on his business]: We, the under-mentioned justices, having no sufficient cause shown to us, and seeing of ourselves no valid reason why the said *A. B.* should not receive such licence, do hereby grant to him this licence for the purposes aforesaid, subject nevertheless to be revoked for misconduct on the part of the said *A. B.*, as in the "Passengers Act, 1855," is provided.

Form of Summons for a Defendant or a Witness.

(c) Insert this when the defendant is summoned.

(d) Insert this in case a witness is summoned.

A. B. Complainant. } This is to command you to appear without fail on
C. D. Defendant. } the _____ day of _____ instant [or next] at _____ o'clock in the _____ noon, at _____ before me, or County, or city, or _____ other the magistrate or justices of the peace then and borough, or police } there present (c) [to answer the complaint of district of _____ [as] (an emigration officer, or assistant emigration officer, or officer of customs), or [in the colonies a government emigration or immigration agent, as the case may be], for a breach of the _____ section [or sections, as the case may be], of the "Passengers Act, 1855,"] (d) [or to give evidence in the complaint of *A. B.* against *C. D.* for breach of the "Passengers Act, 1855."]

Signed

Justice of the peace, or police or stipendiary magistrate, or sheriff or steward, or sheriff substitute, or steward substitute [as the case may be].

Dated this _____ day of _____ 18 _____

To

Form of Conviction and Order of Adjudication under the "Passengers Act, 1855," when the Defendant appears.

(a) State whether emigration officer, or officer of customs, or government emigration agent, or passenger of the ship, as the case may be.

(b) Here describe briefly and in general terms the requirement (or requirements) of the act which has not been fulfilled.

(c) Name the witness, or witnesses if more than one.

(d) Omit these words where there is no conviction, but only an order of adjudication.

A. B. Complainant. } Be it remembered, that on the _____ day of _____
C. D. Defendant. } instant, *C. D.* of _____ personally came before me [or us, as the case may be], at _____ to answer the County, or city, or _____ complaint of *A. B.* (a) for a breach of the borough, or police } section [or sections, as the case may be], of "The Passengers Act, 1855," in that, &c. (b) or [as the case may be], for a breach of the contract contained in a certain district, or steward } [as] be, contract ticket, dated _____ and issued by _____ to _____ for a passage to _____ in the ship _____

Whereupon I [or we] did proceed to examine into the complaint so made against the said *C. D.*, and the same having been [admitted to be true by the said *C. D.*, or as the case may be,] fully proved to my [or our] satisfaction by the testimony on oath of *E. F.* (c), a credible witness [or witnesses], I [or we] (d) (do convict him the said *C. D.* of the offence [or offences] aforesaid; and I [or we]) do adjudge and order that he shall pay to the said *A. B.* as such [emigration officer, or government emigration agent, or officer of customs, or passenger of the ship _____ as the case may be], the sum of £ _____ by way of penalty [or by way of subsistence money, or of

return of passage money, or as damages for breach of such contract as aforesaid, *as the case may be*,] [(e) and shall also pay to the said A. B. the further sum of £ as compensation for the loss and inconvenience occasioned to (f) by the loss of passage in the ship].

(g) (And I [or we] do also adjudge and order that the licence granted to the said C. D. to act as a passage broker be forfeited.)

(h) (And I [or we] do hereby also adjudge and order that the sum of £ being a part not exceeding one moiety of the said penalty of £ be applied to compensate (i) for the wrong or damage which he [she or they] has or have sustained in this matter.)

And I [or we] do further adjudge and order that the said C. D. shall forthwith pay to the said A. B. the further sum of £ for the costs and charges by him the said A. B. incurred in the prosecution of this matter.

Given under my hand and seal [or our hands and seals], this day of 18 .

Signature

Justice of the peace, police or stipendiary magistrate, or sheriff or steward, or sheriff or stewards substitute [as the case may be], for (k) .

(e) Insert this in cases where compensation is awarded.

(f) Name the passenger or passengers by or on whose behalf the compensation is awarded.

(g) Insert this where the offender is a passage broker, and his licence is declared forfeited.

(h) Insert this where compensation out of the penalty is awarded to any aggrieved passenger.

(i) Name the passenger or passengers.

(k) State county or district, &c. as the case may be.

Form of Conviction and Order of Adjudication where the Defendant does not appear.

A. B. Complainant. } Be it remembered, that C. D. of being duly
C. D. Defendant. } summoned to answer the complaint of A. B. (a) for a breach of the section [or sections] of the "Passengers Act, 1855" in that, &c. (b) or [as the case may be], for a breach of the contract contained in a certain contract ticket, dated and issued by to for a passage to in the ship did not appear before me [or us], pursuant to the said summons. Nevertheless, I [or we] did proceed to examine into the complaint so preferred against the said C. D., and the same having been duly proved to my [or our] satisfaction by the testimony on oath of E. F. (c), a credible witness [or witnesses], I [or we] do, &c. (proceed as in preceding form of conviction according to the circumstances of the case).

(a) State whether emigration officer, or officer of customs, or government emigration agent, or passenger of the ship, as the case may be.

(b) Describe briefly and in general terms the requirements [or requirements] of the act which has not been fulfilled.

(c) Name the witness or witnesses.

TABLE showing the mode in which the Sections of the Indian Orders in Council relating to Passenger Ships correspond with the Sections of the Merchant Shipping Act, 1854 (a).

Indian Orders in Council of 1859.		M. S. A. 1854.	Indian Orders in Council of 1859.		M. S. A. 1854.
Sect.		Sect.	Sect.		Sect.
2	corresponds with	122	[36 and 37 regulate wages.]		
3	"	123	38	corresponds with	168
4	"	124	39, 40	"	169
5	"	125	41	"	170
6	"	126	42	"	171
7	"	127	43	"	172
8	"	128	44	"	173
9	"	131	45	"	174
10	"	132, 133	46	"	175
11	"	134	47	"	181
12	"	135	48	"	182
13	"	136	49	"	183
14	"	137	50	"	184
15	"	138	51	"	185
16	"	139	52	"	186
[17	Excepted from examination and certificates masters and mates of registered and purely Asiatic-manned vessels plying between India and Arabia; and act 15 of 1863 adds to the exception similar ships of less than 200 tons, trading between the Straits Settlement and the Gulf of Siam, Eastern Archipelago.]		53	"	187
18	corresponds with	146	[54 Foreign wages payable in current coin.]		
19	"	147	55	corresponds with	188
20	"	148	[56 Levy of wages by distress of goods of person directed to pay.]		
21	Repealed by act 15 of 1863, and replaced by s. 3 of last-mentioned act	149	57	corresponds with	189
22	corresponds with	150	58	"	191
23	"	151	59	"	194
24	"	152	60	"	195
25	"	154	61	"	196
26	"	155	62	"	199
27	"	156	63	"	202
28	"	157	64	"	221
29	"	158	65	"	222
[30	Shipping master may board and muster crew.]		66	"	223
31	corresponds with	161	67	"	224
32	"	162	68	"	225
33	"	163	69	"	228
34	"	166	70	"	231
35	"	167	[71 Shipping master may board and inspect provisions.]		
			72	corresponds with	232
			73	"	233
			74	"	234
			75	"	235
			76	"	236
			77	"	237
			78	"	238
			79	"	239
			80	"	240

(a) The power given to the Governor-General of India in Council by s. 288 of the M. S. Act, 1854, has been exercised by acts 1 of 1859, and 15 of 1863.

Act 28 of 1861, which was passed on the same subject, was repealed by the above-mentioned act of 1863. See *ante*, p. 545.

APPENDIX.

CCCXV

Indian Orders in Council of 1859.	M. S. A. 1854.	Indian Orders in Council of 1859.	M. S. A. 1854.
Sect.	Sect.	Sect.	Sect.
81 Repealed by act 15 of 1863, and replaced by ss. 4 to 7 of that act (b) 241		98 corresponds with	258
82 Ditto, replaced by ss. 8 and 9 242	243	99 "	259
83 corresponds with	244	100 "	432
84 "	245	101, 102 "	433
85 "	246	103 "	280
86 "	247	104 "	281
87 "	248	105 "	282
88 "	249	106 "	283
89 "	250	107 "	284
90 "	251	108 "	285
91 "	252	109 "	286
92 "	253	110 "	287
93 "	254	111, 112 Procedure.	
94 "	255	113 corresponds with	523
95 "	256	114—118 Miscellaneous.	
96 "	257	[Many of the sections of the Indian Act of 1859 correspond closely to or are copies of the English sec- tions, but several are but dis- tantly analogous.]	
97 "			

The power given to the Governor-General by sect. 79 of the 18 & 19 Vict. c. 119, has been exercised by act 2 of 1860. Sect. 1 adopts sects. 2, 3 and 4 of the English act for voyages of emigrant ships from Calcutta, Madras and Bombay to Mauritius, Jamaica, British Guiana, Trinidad, St. Lucia and Grenada, and from ports of British India to ports in the Red Sea and Persian Gulf.

Sect. 2 corresponds with sect. 52 of the English act.

" 3	"	53	"
" 4	"	54	"

(b) Courts having Admiralty jurisdiction in India, and where there is none, the principal Criminal Court at every port in India, are authorized to try charges of incompetency and misconduct against any master, mate, or

engineer, and to make inquiry as to shipwreck or other casualties affecting ships. The local Governments have power to direct similar inquiries on the conduct of masters or mates certificated by any local (Indian) Government.

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